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Washington, Tuesday, February 8, 1949

**TITLE 6—AGRICULTURAL
CREDIT**

**Chapter IV—Production and Market-
ing Administration and Commodity
Credit Corporation, Department of
Agriculture**

**Subchapter C—Loans, Purchases, and Other
Operations**

[1948 C. C. C. Grain Sorghums Bulletin 1,
Amdt. 5]

PART 621—GRAIN SORGHUMS

**SUBPART—1948 GRAIN SORGHUMS LOAN
PROGRAM**

A statement in the FEDERAL REGISTER of December 23, 1948 (13 F. R. 8248) has redesignated Part 263, Grain Sorghums Loan and Purchase Agreements in Chapter II of Title 6 of the Code of Federal Regulations, published in 13 F. R. 3880, 4659, 5524, 5807 and 6949, governing the making of loans on grain sorghums produced in 1948, as Part 621, Grain Sorghums, Subpart—1948 Grain Sorghum Loan Program, in Chapter IV of said code. Sections 263.201 to 263.224 have been redesignated as §§ 621.1 to 621.24.

The county loan rates in paragraph (c) *County loan rates of § 621.24* (formerly § 263.224) *Loan rates* are further amended as follows:

1. To the schedule of county rates for California add the following:

County:	Rate
Alameda	\$2.81

2. To the schedule of county rates for South Dakota add the following:

County:	Rate
Hughes	\$2.30

Issued this 3d day of February 1949.

[SEAL] HAROLD K. HILL,
Acting Manager,
Commodity Credit Corporation,

Approved: February 3, 1949.

FRANK K. WOOLLEY,
Vice President,
Commodity Credit Corporation.

[F. R. Doc. 49-939; Filed, Feb. 7, 1949;
8:58 a. m.]

[1948 C. C. C. Flaxseed Bulletin 1, Amdt. 2
to Suppl. 1]

PART 643—OILSEEDS

SUBPART—1948 FLAXSEED LOAN PROGRAM

A statement in the FEDERAL REGISTER of December 23, 1948 (13 F. R. 8248) has redesignated Part 271, Flaxseed Loans (13 F. R. 3576, 4060, 4247) in Chapter II of Title 6 of the Code of Federal Regulations as "Subpart—1948 Flaxseed Loan Program" in "Part 643—Oilseeds" in Chapter IV of such title. Sections 271.201 to 271.226 have been redesignated as §§ 643.1 to 643.26.

As so redesignated, § 642.26 *Basic county loan rates for No. 1 Flaxseed*, is hereby amended by changing the loan rate for Johnson County, Wyoming, and by adding loan rates of a number of additional counties as set forth below:

COLORADO		No. 1 flaxseed
County:		
Boulder		\$5.53
Elbert		5.53
Kit Carson		5.54
Washington		5.53
Weld		5.53
IDAHO		
Washington		5.63
NEBRASKA		
Box Butte		5.56
OREGON		
Harney		5.63
SOUTH DAKOTA		
Butte		5.59
Charles Mix		5.67
Jones		5.63
Sully		5.67
WISCONSIN		
Burnett		5.77
Outagamie		5.73
WYOMING		
Fremont		5.52
Johnson		5.52
Park		5.52

(Sec. 4 (a), 55 Stat. 493, 56 Stat. 768, sec. 1 (b), Pub. Law 897 80th Cong., sec. 5 Pub. Law 806, 80th Cong., 15 U. S. C. 713a-8)

Issued this 3d day of February 1949.

[SEAL] ELMER F. KRUSE,
Manager,
Commodity Credit Corporation.

Approved: February 3, 1949.

FRANK K. WOOLLEY,
Vice President,
Commodity Credit Corporation.

[F. R. Doc. 49-943; Filed, Feb. 7, 1949;
8:58 a. m.]

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TITLE 7—AGRICULTURE**Chapter IX—Production and Marketing Administration (Marketing Agreements and Orders), Department of Agriculture**

PART 927—MILK IN THE NEW YORK METROPOLITAN MARKETING AREA
PART 963—HOPS GROWN IN OREGON, CALIFORNIA, WASHINGTON, AND IDAHO AND PRODUCTS PRODUCED FROM SUCH HOPS

EDITORIAL CHANGES

EDITORIAL NOTE: 1. In Part 927, the appendix thereto has been codified and the sections redesignated as follows:

Former designation (section)	Present designation (section)
1	927.101
2	927.102
3	927.103
4	927.104
5	927.105
6	927.106
7	927.107

2. Part 963 has been excluded from the Code of Federal Regulations, 1949 Edition, inasmuch as it expired by its own provisions prior to January 1, 1949.

TITLE 15—COMMERCE AND FOREIGN TRADE**Chapter III—Bureau of Foreign and Domestic Commerce, Department of Commerce**

[Allocation Order M-81, as Amended Feb. 3, 1949]

PART 338—ALLOCATION ORDERS**SUBPART—CANS**

Part 338, Subpart—Cans, is hereby amended as follows:

In § 338.45, Schedule 1, Can Specifications, Item 139, Animal Foods, Column 3, by deleting the figure "1" (referring to the footnote "No tinplate or terneplate") and inserting the figure ".25"

In § 338.46, Schedule II, paragraphs (d) (2) (i) and (d) (2) (ii) by deleting the figure "75%" (which appears at the beginning of each subdivision) and by inserting in each subdivision the figure "115%"

(56 Stat. 177, as amended, 61 Stat. 321; Pub. Laws 427, 469, 80th Cong., 50 U. S. C. App. and Sup. 631 et seq., E. O. 9841, Apr. 23, 1947, 12 F. R. 2645, 3 CFR 1947 Supp., E. O. 9942, Apr. 1, 1948, 13 F. R. 1823)

Issued this 3d day of February, 1949.

OFFICE OF DOMESTIC
COMMERCE,
RAYMOND S. HOOVER,
Issuance Officer.

[F. R. Doc. 49-382; Filed, Feb. 7, 1949; 8:45 a. m.]

TITLE 19—CUSTOMS DUTIES**Chapter I—Bureau of Customs, Department of the Treasury**

[T. D. 52124]

PART 4—VESSELS IN FOREIGN AND DOMESTIC TRADES**UNLOADING OF MERCHANDISE IN BULK OUTSIDE A PORT OF ENTRY****Correction**

In Federal Register Document 49-273, appearing at page 143 of the issue for Wednesday, January 12, 1949, the reference to "Section 4.25 (a)" should read "Section 4.35 (a)"

TITLE 26—INTERNAL REVENUE**Chapter I—Bureau of Internal Revenue, Department of the Treasury****Subchapter C—Miscellaneous Excise Taxes**

[T. D. 41]

PART 151—REGULATIONS UNDER THE HARRISON NARCOTIC LAW, AS AMENDED**ORDER FORMS AND MONTHLY RETURNS**

On October 23, 1948, notice of proposed rule making, regarding amendment of Narcotic Regulations No. 5, to provide a third copy of narcotic order forms and to eliminate the reporting of certain detailed information in monthly narcotic returns, was published in the FEDERAL REGISTER (13 F. R. 6249). No objection to the rules proposed having been received, the amendments set forth below are hereby adopted. The amendments

are made in order to provide a more prompt check of purchases and sales of narcotic drugs, and to lighten the burden on the taxpayer of showing certain detailed information on monthly returns.

Narcotic Regulations 5 (26 CFR, Part 151) relating to narcotics subject to the Harrison Narcotic Law, but only as prescribed and made applicable to the Internal Revenue Code by Treasury Decision 4884, approved February 11, 1939 (26 CFR, Cum. Supp., p. 5875) are amended as follows:

PARAGRAPH 1. Article 64 (26 CFR 151.64) is amended to read as follows:

§ 151.64 *Manner of procurement.* A person desiring and entitled to receive order forms should submit requisition on Form 679 to the collector of the district in which he is doing business. The order forms are issued in books each containing 10 sets of original, duplicate and triplicate forms. Blank requisitions, Form 679, may be obtained from the collector and a replacement requisition blank is included in each book of forms. Each requisition shall show the taxpayer's name, address, registry number and class, and the number of books of order forms desired. A charge of 10 cents is made for each book of order forms, and the requisition should be accompanied by remittance of the proper amount in the form of certified check, cash or money order.

PAR. 2. Article 69 (26 CFR 151.69) is amended to read as follows:

§ 151.69 *Execution of forms.* Order forms are issued in triplicate and shall be executed in triplicate. They are arranged to permit the execution of the original, duplicate and triplicate simultaneously by means of interleaved carbon sheets. The original and the triplicate, together with the intervening carbon sheet must be furnished to the consignor, but shall not leave the possession of the person executing the order until the duplicate is made.

The attachment of extra sheets to order forms is not permitted. If one order form is not sufficient to include all the items of an order an additional form or forms shall be used. The order forms are intended solely to cover dispositions of taxable narcotic drugs and preparations to registered persons. They shall not in any case be used as prescriptions.

PAR. 3. Article 75 (26 CFR 151.75) is amended by striking from the first sentence thereof the number "10" and inserting in lieu of such number the number "5"

PAR. 4. Article 82 (26 CFR 151.82) is amended by inserting in the last sentence thereof immediately following the word "original" the words "and triplicate"

PAR. 5. Article 86 (26 CFR 151.86) is amended by striking out the first sentence and inserting in lieu thereof the following:

§ 151.86 *Endorsements.* An order form made out to a Class I or Class II registrant who cannot fill it may be indorsed in the spaces provided for that purpose on the reverse sides of the original and triplicate forms and referred by him to another such registrant for filling.

PAR. 6. Article 88 (26 CFR 151.88) is amended to read as follows:

§ 151.88 *Filing of orders.* The duplicate shall be kept on file by the vendee for at least two years. The original shall be filed and preserved for a like period by the vendor. The triplicate shall be forwarded by the vendor at the close of the month during which it is filled to the Narcotics District Supervisor for the district in which the vendor is located.

Where an order is only partially filled during one month and other items thereon are to be supplied during a following month, as provided in Article 82, the triplicate should be retained by the vendor and forwarded to the district supervisor at the close of the month during which the final shipment is made or during which the 60-day validity period expires.

Any order form which is improperly executed or mutilated so as to make it unusable, shall not be destroyed, but all copies shall be kept on file with the other duplicates.

PAR. 7. Article 89 (26 CFR 151.89) is amended to read as follows:

§ 151.89 *Lost and stolen order forms.* If a purchaser ascertains that an original unfilled order has been lost, he shall execute another in triplicate and an affidavit stating that the goods covered by the first order were not received through loss of the order, and shall note on the second order the number and date of the lost order and the fact that it was lost. The duplicate of the second order and the affidavit shall be filed with the duplicate of the order first executed. If the first order is subsequently received by the person to whom it was directed, he shall mark upon the face thereof, "Not accepted" and return it to the purchaser, who shall attach it to the duplicate and the affidavit.

Whenever any used or unused order forms are stolen from, or lost (otherwise than in the course of transmission) by, any person registered under the act, he shall immediately upon discovery of such theft or loss, report the same to the Commissioner of Narcotics, Washington, D. C., stating the serial number of each form stolen or lost. If the theft or loss includes any original orders received from other persons and the registrant is unable to state the serial numbers of such orders, he shall report the date of receipt thereof and the names and addresses of the purchasers. If an entire book of order forms is lost or stolen, and the registrant is unable to state the serial numbers of the order forms contained therein, he shall report, in lieu of the numbers of the forms contained in such book, the date or approximate date of purchase thereof. If any unused order form reported stolen or lost is subsequently recovered or found, the Commissioner of Narcotics shall be notified thereof.

PAR. 8. Article 116 (26 CFR 151.116) is amended to read as follows:

§ 151.116 *Form 810b; dispositions.* All dispositions of taxable narcotics and preparations by a manufacturer as such, including exports, sales, transfers to other classes at the same location, and losses, shall be reported on form 810b. A separate sheet, properly headed in the space provided, shall be used for each

different type of transaction. On each sheet separate entries shall be used to report dispositions of each kind of drug and of each different type and size of package or unit involved. All losses reported shall be fully explained.

The details of all exports, all insular sales, and all domestic sales to manufacturers (Class I) manufacturers of exempted preparations (Class V) and wholesale dealers (Class II) of any narcotic drug, and the details of all sales of (a) opium, its tinctures and extracts, (b) Pantopon, (c) Morphine and its salts, (d) dihydromorphinone and its salts (Dilaudid, Hymorphan) (e) dihydrocodeinone and its salts (Dilcodid, Hycodan) (f) methyl dihydromorphinone and its salts, (Metopon) (g) cocaine and its salts, (h) isonipecaine and its salts (Demerol) and (i) Amidone (4, 4-diphenyl-6-dimethylamino-heptanone 3) (Methodon, Dolophin, Adanon) to retail pharmacists (Class III) practitioners (Class IV) hospitals, clinics, and sanatoria (Classes III or IV), and laboratories (Class VI) shall be reported in full on form 810b. The details of sales of other drugs to Class III, IV and VI registrants, may be omitted from returns, but such transactions shall be included in summarized entries on form 810b. For all such sales not reported in detail the manufacturer shall have available for inspection original sales orders, delivery slips, or other papers or records sufficient to fully evidence and explain the dispositions.

PAR. 9. Article 151 (26 CFR 151.151) is amended to read as follows:

§ 151.151 *Form 811b; dispositions.* All dispositions of taxable narcotics and preparations by a wholesale dealer as such, including exports, sales, transfers to other classes at the same location, and losses, shall be reported on form 811b. A separate sheet, properly headed in the space provided, shall be used for each different type of transaction. On each sheet separate entries shall be made of dispositions of each kind of drug and of each different type and size of package or unit involved. All losses reported shall be fully explained.

The details of all exports, all insular sales, and all domestic sales to manufacturers (Class I) manufacturers of exempted preparations (Class V), and wholesale dealers (Class II) of any drug, and the details of all sales of (a) opium, its tinctures and extracts, (b) pantopon, (c) morphine and its salts, (d) dihydromorphinone and its salts, (dilaudid, hymorphan) (e) dihydrocodeinone and its salts (dilcodid, hycodan) (f) methyl dihydromorphinone and its salts (metopon) (g) cocaine and its salts, (h) isonipecaine and its salts (demerol) and (i) Amidone (4, 4-diphenyl-6-dimethylamino-heptanone 3) (Methodon, Dolophin, Adanon) to retail pharmacists (Class III) practitioners (Class IV), hospitals, clinics, and sanatoria (Classes III or IV) and laboratories (Class VI) shall be reported in full on form 811b. The details of sales of other drugs to Class III, IV and VI registrants, may be omitted from returns, but such transactions shall be included in summarized entries on form 811b. For all such sales not re-

ported in detail the wholesale dealer shall have available for inspection original sales orders, delivery slips, or other papers or records sufficient to fully evidence and explain the dispositions.

PAR. 10. This Treasury decision shall become effective April 1, 1949.

(Secs. 2551, 2559, and 2606 of the Internal Revenue Code (53 Stat. 270, 277, 283; 26 U. S. C. 2551, 2559, 2606))

[SEAL] H. J. ANSLINGER,
Commissioner of Narcotics.
GEO. J. SCHOENEMAN,
Commissioner of Internal Revenue.

Approved: February 2, 1949.

THOMAS J. LYNCH,
Acting Secretary of the Treasury.

[F. R. Doc. 49-912; Filed, Feb. 7, 1949;
8:54 a. m.]

TITLE 39—POSTAL SERVICE

Chapter I—Post Office Department

PART 3—MISCELLANEOUS PROVISIONS RELATING TO THE DEPARTMENT AND THE POSTAL SERVICE

DAMAGE TO PERSON OR PROPERTY BY POSTAL OPERATIONS

In § 3.5 *Damage to person or property by postal operations* (13 F. R. 8850), amend subparagraph (9) of paragraph (n) to read as follows:

(n) *Investigations and reports of accidents.* * * *

(9) *When civil suit to be brought by Government.* When in the opinion of the Solicitor the institution of civil suit is warranted against a private person or company, he shall so advise the Chief Inspector, who shall thereupon prepare the request of the Post Office Department upon the Department of Justice that such suit shall be brought, and in case of recovery shall arrange for the proper disposition of the proceeds.

(R. S. 161, 396, secs. 304, 309, 42 Stat. 24, 25; 5 U. S. C. 22, 369)

[SEAL] J. M. DONALDSON,
Postmaster General.

[F. R. Doc. 49-883; Filed, Feb. 7, 1949;
8:45 a. m.]

PART 127—INTERNATIONAL POSTAL SERVICE: POSTAGE RATES, SERVICE AVAILABLE, AND INSTRUCTIONS FOR MAILING

TRIPOLITANIA

Section 127.367 *Tripolitania* (13 F. R. 9226) is amended to read as follows:

§ 127.367 *Tripolitania*—(a) *Regular mails*—(1) *Classifications, rates, weight limits and dimensions.* See Table § 127.1. Small packets not accepted.

(2) *Registration.* Fee, 25 cents. (See §§ 127.15 and 127.101.)

(3) *Indemnity.* See § 127.105.

(4) *Special delivery.* No service.

(5) *Air mail service.* Postage rate 15 cents one-half ounce. (See § 127.20.)

(6) *Prohibitions.* The articles prohibited as parcel post are also prohibited in the regular mails.

Printed "Special-request" and "Office-request" envelopes		Description			Unprinted envelopes			Printed "Special-request" and "Office-request" envelopes		Description			Unprinted envelopes		
500	1,000	Denomination	Kind	Color	1,000	500	250	500	1,000	Denomination	Kind	Color	1,000	500	250
		Standard quality								Window—Continued					
		No. 5—3½ x 6½								No. 13—3¾ x 6¾					
7.12	14.24	1-cent.....	Standard.....	White only.....	13.80	6.90	3.45	7.52	15.04	1-cent.....	Window.....	White only.....	14.60	7.30	3.65
9.02	18.24	1½-cent.....	Standard.....	White only.....	18.80	9.40	4.70	10.02	20.04	1½-cent.....	Window.....	White only.....	19.60	9.80	4.90
12.12	24.24	2-cent.....	Standard.....	White only.....	23.80	11.90	5.95	12.52	25.04	2-cent.....	Window.....	White only.....	24.60	12.30	6.15
17.12	34.24	3-cent.....	Standard.....	White only.....	33.80	16.90	8.45	17.52	35.04	3-cent.....	Window.....	White only.....	34.60	17.30	8.65
		No. 13—3¾ x 6¾								No. 6—3½ x 8½					
7.22	14.44	1-cent.....	Standard.....	White only.....	14.00	7.00	3.50	12.82	25.64	2-cent.....	Window.....	White only.....	25.20	12.60	6.30
9.72	19.44	1½-cent.....	Standard.....	White only.....	19.00	9.50	4.75	17.82	35.64	3-cent.....	Window.....	White only.....	35.20	17.60	8.80
12.22	24.44	2-cent.....	Standard.....	White only.....	24.00	12.00	6.00			No. 7—3½ x 8½					
17.22	34.44	3-cent.....	Standard.....	White only.....	34.00	17.00	8.50			No. 8—4½ x 9½					
		No. 7—3½ x 8½						12.94	25.88	2-cent.....	Window.....	White only.....	25.44	12.72	6.36
12.72	25.44	2-cent.....	Standard.....	White only.....	25.00	12.50	6.25	17.94	35.88	3-cent.....	Window.....	White only.....	35.44	17.72	8.80
17.72	35.44	3-cent.....	Standard.....	White only.....	35.00	17.50	8.75			No. 8—4½ x 9½					
		No. 8—4½ x 9½						8.08	16.16	1-cent.....	Window.....	White only.....	15.72	7.86	3.93
7.98	15.72	1-cent.....	Standard.....	White only.....	15.28	7.64	3.82	10.58	21.16	1½-cent.....	Window.....	White only.....	20.72	10.36	5.18
10.36	20.72	1½-cent.....	Standard.....	White only.....	20.28	10.14	5.07	13.08	26.16	2-cent.....	Window.....	White only.....	25.72	12.86	6.43
12.80	25.72	2-cent.....	Standard.....	White only.....	25.28	12.64	6.32	18.08	36.16	3-cent.....	Window.....	White only.....	35.72	17.86	8.93
17.80	35.72	3-cent.....	Standard.....	White only.....	35.28	17.64	8.82			Precanceled					
		No. 9—4½ x 10½								No. 5—3½ x 6½					
		No. 9—4½ x 10½								No. 13—3¾ x 6¾					
13.04	26.08	2-cent.....	Standard.....	White only.....	25.64	12.82	6.41	7.32	14.64	1-cent.....	Standard.....	White only.....	14.20	7.10	3.55
18.04	36.08	3-cent.....	Standard.....	White only.....	35.64	17.82	8.91			No. 13—3¾ x 6¾					
		Window								No. 8—4½ x 9½					
		No. 5—3½ x 6½						7.36	14.72	1-cent.....	Standard.....	White only.....	14.23	7.14	3.57
7.46	14.92	1-cent.....	Window.....	White only.....	14.48	7.24	3.62			No. 8—4½ x 9½					
9.96	19.92	1½-cent.....	Window.....	White only.....	19.48	9.74	4.87			No. 8—4½ x 9½					
12.46	24.92	2-cent.....	Window.....	White only.....	24.48	12.24	6.12			No. 8—4½ x 9½					
17.46	34.92	3-cent.....	Window.....	White only.....	34.48	17.24	8.62	7.92	15.84	1-cent.....	Standard.....	White only.....	15.40	7.70	3.85

(R. S. 3915, 3917, 3918, sec. 1, 18 Stat. 231, sec. 1, 27 Stat. 733, 34 Stat. 476; 39 U. S. C. 354, 360, 361)

This amendment shall become effective February 1, 1949.

[SEAL]

J. M. DONALDSON,
Postmaster General.

[F R. Doc. 49-885; Filed, Feb. 7, 1949; 8:45 a. m.]

TITLE 29—LABOR

Subtitle A—Regulations of the Secretary of Labor

EDITORIAL CHANGES INCIDENT TO PUBLICATION OF CODE OF FEDERAL REGULATIONS, 1949 EDITION

Correction

In Federal Register Document 48-11306, appearing at page 8639 of the issue for Wednesday, December 29, 1948, paragraph 4 b should read as follows:

b. Sections 2.4 and 2.5 are deleted. Section 2.6a is redesignated § 2.4 and §§ 2.6, 2.7 and 2.8 are redesignated §§ 2.5, 2.6 and 2.7, respectively.

TITLE 34—NATIONAL MILITARY ESTABLISHMENT

Chapter IV—Joint Regulations of the Armed Forces

Subchapter A—Armed Services Procurement Regulation

REPUBLICATION OF PORTIONS OF REGULATION

EDITORIAL NOTE: Sections I-VI of the Armed Services Procurement Regulation were originally published as Parts 851-856 of Title 10, 13 F. R. 3074, 4914. Sections I-VI were renumbered Parts 400-405 of Title 34, 13 F. R. 7345. They are republished below under the new numbers in order that they may be used more conveniently in conjunction with the remaining portions of the regulation, one of which, Sections X and XI, is published as Parts 409 and 410 below in this issue. Sections VII-IX and XII-XIV will appear as Parts 406-408 and 411-413 in subsequent issues of the FEDERAL REGISTER.

Foreword. The Armed Services Procurement Regulation, hereby issued by the Departments of the Army, Navy, and Air Force, appreciably changes the procurement policies and practices of the three Departments under the First War Powers Act, and provides for new pro-

curement policies and practices, on and after May 19, 1948, under the Armed Services Procurement Act, Public Law 413, 80th Congress.

When the President signed the Armed Services Procurement Act on February 19, 1948, he wrote to the Secretary of Defense as follows:

The act states the basic policies of the Government with respect to procurement by the Armed Services. It declares that a fair proportion of all procurements shall be placed with small business concerns. It also states that all purchases and contracts for supplies and services shall be made by advertising, except under circumstances specified in the act where exceptions to this general policy may be made.

This bill grants unprecedented freedom from specific procurement restrictions during peacetime. That freedom is given to permit the flexibility and latitude needed in present day national defense activities. The basic need, however, remains to assure favorable price and adequate service to the Government. To the degree that restrictions have been diminished, therefore, responsibility upon the Defense Establishment has been increased. There is danger that the natural desire for flexibility and speed in procurement will lead to excessive placement of contracts by negotiation and undue reliance upon large concerns, and this must not occur.

For these reasons, I am asking you to specify detailed standards to guide your pro-

curement officers concerning the placing of business with small concerns and the circumstances under which they may waive the general policy of advertising for bids. It is of great importance in procurement matters to establish standards and definitions to guide all personnel who have authority to place contracts. Otherwise, differences in interpretation and policies may result in imprudent contracts and give rise to doubts about the wisdom of this new procurement system.

It is believed that the Armed Services Procurement Regulation which is now being issued carries out on a policy level the instructions contained in the President's letter. All procurement personnel are enjoined to follow strictly the standards and requirements set forth in this regulation as well as in such implementing procedures as will be issued under it from time to time by each respective Department.

GORDON GRAY,

The Assistant Secretary of the Army.

M. E. ANDREWS,

Assistant Secretary of the Navy.

A. S. BARROWS,

Under Secretary of the Air Force.

PART 400—GENERAL PROVISIONS

SUBPART A—INTRODUCTION

- Sec. 400.100. Scope of subpart.
- 400.101. Purpose of subchapter.
- 400.102. Applicability of subchapter.
- 400.103. Effective date of subchapter.
- 400.104. Arrangement of subchapter.
- 400.104-1. General plan.
- 400.104-2. Numbering.
- 400.104-3. Cross references.
- 400.104-4. Citation.
- 400.105. Amendment of subchapter.
- 400.106. Department procedures under subchapter.
- 400.107. Procuring activity instructions under subchapter.
- 400.108. Deviations from subchapter.
- 400.109. Administration and interpretation.
- 400.110. Periodic reports of purchases and contracts.
- 400.111. Reports of suspected criminal conduct.

SUBPART B—DEFINITIONS OF TERMS

- 400.201. Definitions.
- 400.201-1. Department.
- 400.201-2. Secretary.
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- 400.201-5. Contracting Officer.
- 400.201-6. Contracts.
- 400.201-7. Procurement.
- 400.201-8. Supplies.
- 400.201-9. Sources of supplies.

SUBPART C—BASIC POLICIES

- 400.300. Scope of subpart.
- 400.301. Methods of procurement.
- 400.302. Sources of supplies.
- 400.302-1. Government agencies.
- 400.302-2. Sources outside the Government.
- 400.302-3. Small business concerns.
- 400.302-4. Foreign purchases.
- 400.303. Ineligible contractors and disqualified bidders.
- 400.303-1. Additions to and removals from the list of ineligible contractors and disqualified bidders.
- 400.303-2. Exchange of lists.
- 400.304. Types of contracts.
- 400.305. Specifications.

SUBPART D—PROCUREMENT RESPONSIBILITY AND AUTHORITY

- 400.400. Scope of subpart.
- 400.401. Responsibility of each procuring activity.

- Sec. 400.402. General authority of contracting officers.
- 400.403. Requirements to be met before entering into contracts.
- 400.404. Special requirements to be met before entering into negotiated contracts.

AUTHORITY: §§ 400.100 to 400.404 issued under sec. 1 (a), (b), 54 Stat. 712, 55 Stat. 838, Pub. Law 413, 80th Cong.; 41 U. S. C. preceding sec. 1 note, 50 U. S. C. App. 601-622; E. O. 9801, Dec. 27, 1941, 3 CFR Cum. Supp.

SUBPART A—INTRODUCTION

§ 400.100 *Scope of subpart.* This subpart sets forth (a) introductory information pertaining to this subchapter (its purpose, applicability, effective date, and arrangement) and (b) instructions for amending, implementing, and deviating from this subchapter.

§ 400.101 *Purpose of subchapter.* This subchapter, issued by the Secretaries of the Army, Navy, and Air Force, establishes for the Departments of the Army, Navy, and Air Force uniform policies relating to the procurement of supplies and services under the authority of the Armed Services Procurement Act of 1947, Public Law 413, 80th Congress, (hereinafter referred to as "the act"), or under other statutory authorization.

§ 400.102 *Applicability of subchapter.* This subchapter shall apply to all purchases and contracts made by any Department for the procurement of supplies or services which obligate appropriated funds (including available contract authorizations) and which are executed as of a date on or after the effective date of this subchapter. This subchapter shall not apply (a) to any contract formalizing a preliminary contractual agreement, such as a letter contract or a letter of intent, which itself was made prior to the effective date of this subchapter; or (b) to any amendment, modification, or supplemental agreement with respect to any contract executed as of a date prior to the effective date of this subchapter. *Provided,* That this subchapter shall apply to any such amendment, modification, or supplemental agreement which provides for the new or additional procurement of supplies or services. Each such contract shall contain a statement of the statutory authorization under which the contract is made, and in the case of negotiated contracts shall cite or refer to either the appropriate paragraph of section 2 of the act (together with any such supporting statement or certificate as is required by the provisions of Part 402 of this subchapter) or such other statutory authorization as may apply. Rules, regulations, and directives of any Department or Departments not in conflict with this subchapter, as from time to time amended, shall remain in full force and effect. This subchapter is not intended to cover detailed procurement procedures or instructions of the respective Departments and their procuring activities, all of which procedures and instructions may be prescribed as provided in §§ 400.106 and 400.107.

§ 400.103 *Effective date of subchapter.* This subchapter shall be effective on and after May 19, 1948.

§ 400.104 Arrangement of subchapter.

§ 400.104-1 *General plan.* This subchapter is intended to cover broad policies with respect to procurement. The subchapter is divided into parts, each one of which deals with a separate aspect of procurement; and each part is further subdivided into subparts and sections.

§ 400.104-3 *Cross references.* Unless specifically stated otherwise, cross references in this subchapter indicate sections, subparts, or parts of this subchapter.

§ 400.104-4 *Citation.* This subchapter shall be referred to as the Armed Services Procurement Regulation, and any paragraph may be cited as ASPR followed by the paragraph number. Thus, this paragraph would be cited as ASPR 1-104.4.

§ 400.105 *Amendment of subchapter.* This subchapter may be amended from time to time by joint action of the Secretaries of the three Departments. Recommendations for amendments shall be submitted within each Department to the Secretary thereof, in accordance with procedures prescribed by that Department. Unless otherwise specifically provided in any amendment, compliance therewith shall not be mandatory until thirty days after the date of its issuance, although compliance shall be authorized from such date.

§ 400.106 *Department procedures under subchapter.* The Secretary of any Department may implement this subchapter by prescribing for his Department detailed procurement procedures which are not inconsistent with this subchapter. Copies of such procedures shall be forwarded to the other Departments.

§ 400.107 *Procuring activity instructions under subchapter.* The head of any procuring activity of any Department may prescribe for his activity detailed operating instructions which are not inconsistent with this subchapter or with the procurement procedures prescribed for that Department. Copies of such operating instructions will be distributed in accordance with procedures prescribed by each respective Department.

§ 400.108 *Deviations from subchapter.* Deviations from the requirements of this subchapter shall be made only in accordance with procedures prescribed by each respective Department, and then only in cases where special circumstances justify the deviation. A report of any such deviation shall be furnished to the other Departments.

§ 400.109 *Administration and interpretation.* All procedures, instructions, deviations, and interpretations with respect to this subchapter shall be approved in accordance with procedures prescribed by each respective Department.

§ 400.110 *Periodic reports of purchases and contracts.* The following periodic reports of purchases and contracts shall be made by each Department in accordance with the specified provisions of this subchapter and in the form

and manner to be prescribed by each respective Department:

(a) In accordance with the provisions of § 402.302-3 of this subchapter, an annual report of the total value of all contracts placed by each Department during each fiscal year with small business concerns;

(b) In accordance with the provisions of § 402.103 of this subchapter, an annual report of the total value of all contracts negotiated by each Department during each fiscal year under each of the circumstances permitting negotiation enumerated in Subpart B of Part 402 of this subchapter;

(c) In accordance with the provisions of § 402.211-4 of this subchapter, a semi-annual report of all research and development contracts negotiated by each Department; and

(d) In accordance with the provisions of § 402.216-4 of this subchapter, a semi-annual report of all contracts negotiated by each Department in the interest of national defense or industrial mobilization.

§ 400.111 *Reports of suspected criminal conduct.* Reports of possible violations of Federal criminal statutes relating to procurement shall be made by each respective Department in accordance with procedures prescribed by that Department.

SUBPART B—DEFINITIONS OF TERMS

§ 400.201 *Definitions.* As used throughout this subchapter, the following terms shall have the meanings set forth below:

§ 400.201-1 *Department.* The term "Department" includes the Department of the Army, the Department of the Navy, and the Department of the Air Force.

§ 400.201-2 *Secretary.* The term "Secretary" means the Secretary, the Under Secretary, or any Assistant Secretary of any Department.

§ 400.201-3 *Procuring activity.* The term "procuring activity" includes, for the Army, the technical services, the army areas, the National Guard Bureau, the Military District of Washington, and the overseas commands; for the Navy, each Bureau of the Navy Department, the Office of Naval Research, the Aviation Supply Office, and the United States Marine Corps; for the Air Force, the Air Materiel Command, and the overseas commands. It also includes the Armed Services Medical Procurement Agency, the Armed Services Petroleum Purchasing Agency, and any other procuring activity hereafter established. The number and designation of particular procuring activities of any Department may be changed by directive of the Secretary of that Department.

§ 400.201-4 *Head of a procuring activity.* The term "head of a procuring activity" includes, for the Army, the Chiefs of the technical services, the Army Commanders, the Chief of the National Guard Bureau, the Commanding General of the Military District of Washington, and the Commanding Generals of the Oversea Commands; for the Navy,

the Chief of each Bureau, the Chief of Naval Research, the Aviation Supply Officer, and the Commandant of the United States Marine Corps; for the Air Force, the Commanding General of the Air Materiel Command, and the Commanding Generals of the Oversea Commands. It also includes the Commanding Officer of the Armed Services Medical Procurement Agency, the Executive Officer of the Armed Services Petroleum Purchasing Agency, and the head of any other procuring activity hereafter established. The number and designation of heads of procuring activities within any Department may be changed by directive of the Secretary of that Department.

§ 400.201-5 *Contracting officer.* The term "Contracting Officer" means any officer or civilian employee of any Department who, in accordance with procedures prescribed by each respective Department, has been or shall be designated a Contracting Officer (and whose designation has not been terminated or revoked) with the authority to enter into and administer contracts and make determinations and findings with respect thereto, or any part of such authority, as hereinafter provided.

§ 400.201-6 *Contracts.* The term "contracts" means all types of agreements and orders for the procurement of supplies or services. It includes, by way of description and without limitation, awards and preliminary notices of award; contracts of a fixed-price, cost, cost-plus-a-fixed-fee, or incentive type; contracts providing for the issuance of job orders, task orders or task letters thereunder; letter contracts, letters of intent, and purchase orders. It also includes amendments, modifications, and supplemental agreements with respect to any of the foregoing.

§ 400.201-7 *Procurement.* The term "procurement" includes, by way of description and without limitation, purchasing, renting, leasing, or otherwise obtaining supplies or services.

§ 400.201-8 *Supplies.* The term "supplies" means all property except land or interests in land. It includes, by way of description and without limitation, public works, buildings, facilities; ships, floating equipment, and vessels of every character, type and description, together with parts and accessories thereto; aircraft and aircraft parts, accessories, and equipment; machine tools; and the alteration or installation of any of the foregoing.

§ 400.201-9 *Sources of supplies.* The term "sources of supplies" shall include only (i) manufacturers or (ii) regular dealers in the supplies to be procured. A "regular dealer" shall be deemed to be any one of the following:

(a) A person or firm regularly carrying a stock of the supplies being procured, and having a warehouse or place of business from which sales are made;

(b) A bona fide manufacturer's agent regularly employed on a salary or commission basis by one or more manufacturers of the supplies being procured, provided such agent has authority to bind the manufacturer, and provided further

that any procurement of supplies from or through such agent results in a contract issued in the name of the principal;

(c) In the case of supplies of particular kinds (lumber and timber products, coal, machine tools, or hay, grain, feed, and straw) a person or firm satisfying the requirements of 41 CFR 201.101 (b) (Article 101 (b) of the regulations prescribed by the Secretary of Labor under the Walsh-Healey Public Contracts Act (act of June 30, 1936; 41 U. S. C. 35)).

SUBPART C—BASIC POLICIES

§ 400.300 *Scope of subpart.* This subpart sets forth the general procurement policies of the Departments with respect to (a) methods of procurement, (b) sources of supply (including governmental and foreign purchases), (c) ineligible contractors and disqualified bidders, (d) types of contracts, and (e) specifications.

§ 400.301 *Methods of procurement.* It shall be the objective of each Department to use that method of procurement which will be most advantageous to the Government—price, quality, and other factors considered. The two principal methods of procurement are by means of formal advertising and by means of negotiation. Procurement shall generally be effected by advertising for bids and thereafter awarding a contract to the lowest responsible bidder, all in accordance with the detailed requirements and procedures set forth in Part 401 of this subchapter. Procurement may be effected by negotiation, however, when authorized by and conducted in accordance with the detailed requirements and procedures set forth in Part 402 of this subchapter. Procurement may also be effected, as provided in Parts 403 and 404 of this subchapter, by such means as (a) coordinated procurement or (b) interdepartmental procurement.

§ 400.302 *Sources of supplies.*

§ 400.302-1 *Government agencies.* To the extent possible, supplies shall be obtained from surplus property in the hands of disposal agencies, or from surplus or excess stocks in the hands of any Government agency. Interdepartmental purchases shall be made in accordance with the provisions of Part 404 of this subchapter.

§ 400.302-2 *Sources outside the Government.* Irrespective of whether the procurement of supplies or services from sources outside the Government is to be effected by formal advertising or by negotiation, competitive proposals ("bids" in the case of procurement by formal advertising, "quotations" in the case of procurement by negotiation) shall be solicited from all such qualified sources of supplies or services as are deemed necessary by the Contracting Officer to assure such full and free competition as is consistent with the procurement of types of supplies and services necessary to meet the requirements of the Department concerned, and thereby to obtain for the Government the most advantageous contract—price, quality, and other factors considered.

§ 400.302-3 *Small business concerns.* It shall be the policy of each Department to place with small business concerns (herein considered to be any concern which employs fewer than 500 persons) a fair proportion of the total procurement of supplies and services for that Department. As a means of carrying out this policy, and when not clearly to the disadvantage of the Department, the procurement of supplies or services shall be divided into such reasonably small lots as will enable and encourage small business concerns to make bids or quotations on such supplies or services or on portions thereof. Each Department shall maintain a record of the total value of all contracts placed by it during each fiscal year with small business concerns, and shall prepare an annual report thereon, as of the end of each fiscal year and in the form and manner to be prescribed by the Department, to be submitted to the Munitions Board in the National Military Establishment for the preparation of a combined Armed Services report to be submitted to the President. To this end, each Department shall, in soliciting competitive proposals, request any necessary information as to the size of each business concern submitting a proposal.

§ 400.302-4 *Foreign purchases.* Foreign purchases shall be made in accordance with the provisions of Part 405 of this subchapter¹ and upon compliance with any other applicable provisions of this subchapter.

§ 400.303 *Ineligible contractors and disqualified bidders.* In accordance with its own procurement procedures, each Department shall maintain, and make available to all procuring activities of that Department, a current list of ineligible contractors and disqualified bidders, which list shall (a) comprise the following different groups of persons and firms, (b) indicate the reason for placing each person or firm on such list, and (c) indicate the extent to which each procuring activity is restricted in its dealings with any person or firm on such list:

(1) Persons and firms listed by the Comptroller General in accordance with the provisions of section 3 of the Walsh-Healey Public Contracts Act (Act of June 30, 1936; 41 U. S. C. 35) which have been found by the Secretary of Labor to have violated any of the agreements or representations required by that act.

(2) Persons and firms listed by the Department of Labor which have been held ineligible to be awarded contracts subject to the Walsh-Healey Public Contracts Act (that is, any contract for supplies in an amount exceeding \$10,000) for the reason that they do not qualify as "manufacturers" or "regular dealers" within the meaning of section 1 (a) of said act.

(3) Persons and firms listed by the Comptroller General in accordance with the provisions of section 3 of the Davis-Bacon Act (act of March 3, 1931, 40 U. S. C. 276a) found by the Comptroller General to have violated said act.

(4) Contractors who have been disqualified or declared ineligible in accordance with procedures prescribed by each respective Department.

§ 400.303-1 *Additions to and removals from the list of ineligible contractors and disqualified bidders.* The names of contractors or bidders shall be placed on or removed from a Department's list of ineligible contractors and disqualified bidders in accordance with procedures prescribed by that Department.

§ 400.303-2 *Exchange of lists.* Each Department shall forward a copy of its list to the other Departments, and shall keep the other Departments advised of changes therein.

§ 400.304 *Types of contracts.* Only the fixed-price or lump-sum type of contract shall be used for procurement by formal advertising. For procurement by negotiation, it shall be the general practice for the fixed-price type of contract to be used (with or without provision for price revision) although under such method of procurement it shall be permissible to use any other method of contracting which complies with the applicable provisions of Subpart D of Part 402 of this subchapter.

§ 400.305 *Specifications.* There shall be one system of military specifications to be used by all Departments in accordance with policies and procedures to be established by the Munitions Board. Existing or new specifications, and amendments thereto, may be used until superseded or revised. Applicable Federal Specifications, as prepared by the Director of the Bureau of Federal Supply, Treasury Department, are acceptable for use. If for administrative reasons an applicable Federal specification cannot be used to meet the particular or essential needs of a Department, purchase specifications of that Department may then be used: *Provided*, That such specifications shall include in substance all applicable provisions of the related Federal specification, and a report showing the need for the use of such purchase specifications (whenever the purchase exceeds \$1,000 and whenever there is in existence an applicable Federal Specification) shall be made to the Director of the Bureau of Federal Supply, which report shall suffice for all subsequent purchases of a similar nature.

SUBPART D—PROCUREMENT RESPONSIBILITY AND AUTHORITY

§ 400.400 *Scope of subpart.* This subpart deals with the procurement responsibility and authority of (a) the head of each procuring activity, and (b) Contracting Officers; and imposes limitations upon the authority to enter into contracts.

§ 400.401 *Responsibility of each procuring activity.* Except as otherwise prescribed by procedures of each respective Department, the head of each procuring activity, as now or hereafter established, is responsible for the procurement of supplies and services under or assigned to the procurement cognizance of his activity. The head of each procuring activity is authorized, within limits imposed by his Department, to designate such person or persons as he may select as Contracting Officers, within the meaning of that term as used throughout this subchapter.

§ 400.402 *General authority of contracting officers.* In accordance with the provisions of § 400.401, and subject to the requirements prescribed in §§ 400.403, 400.404, and 400.405, any Contracting Officer is hereby authorized to enter into contracts for supplies or services, in accordance with procedures prescribed by the Department concerned, on behalf of the Government and in the name of the United States of America, whether by formal advertising or by negotiation or by coordinated or interdepartmental procurement as provided herein.

§ 400.403 *Requirements to be met before entering into contracts.* Irrespective of whether procurement is to be effected by formal advertising or by negotiation, no contract shall be entered into unless:

(a) All applicable requirements of law, of this subchapter, and of procedures prescribed by each respective Department have been met; and

(b) Such business clearance or approval as is prescribed by applicable Department procedures has been obtained.

§ 400.404 *Special requirements to be met before entering into negotiated contracts.* In addition to the requirements set forth in § 400.403, no contract shall be entered into as a result of negotiation until such determinations and findings as may be required with respect to the circumstances justifying negotiation and with respect to the use of a special method of contracting have been made by the persons and in the manner prescribed in Subparts C and D of Part 402.

PART 401—PROCUREMENT BY FORMAL ADVERTISING

Sec. 401.000 Scope of part.

SUBPART A—USE OF FORMAL ADVERTISING

401.101 Meaning of formal advertising.
401.102 Use of formal advertising.
401.103 General requirements for formal advertising.

SUBPART B—SOLICITATION OF BIDS

401.200 Scope of subpart.
401.201 Preparation of forms.
401.202 Methods of soliciting bids.
401.202-1 Mailing or delivering to prospective bidders.
401.202-2 Displaying in public place.
401.202-3 Publishing in trade journals.
401.202-4 Publishing in newspapers.
401.203 Office of permanent record.

SUBPART C—SUBMISSION OF BIDS

401.301 Method of submission.
401.302 Time of submission.
401.303 Modification or withdrawal of bids.

SUBPART D—OPENING OF BIDS AND AWARD OF CONTRACT

401.400 Scope of subpart.
401.401 Opening of bids.
401.402 Recording of bids.
401.403 Rejection of bids.
401.404 Minor informalities or irregularities in bids.
401.405 Mistakes in bids.
401.405-1 Obvious or apparent mistakes of a clerical nature.
401.405-2 Mistakes other than obvious or apparent mistakes of a clerical nature.

¹ To be promulgated at a later date.

- Sec.
401.405-3 Disclosure of mistakes after award.
401.406 Award.
401.406-1 Responsible bidder.
401.406-2 Discounts.
401.406-3 Other factors to be considered.
401.406-4 Equal bids.
401.406-5 Statement and certificate of award.
401.407 Information to bidders.

SUBPART E—QUALIFIED PRODUCTS

- 401.500 Scope of subpart.
401.501 Authority for qualified products.
401.502 Justification for inclusion of products on Qualified Products List.
401.503 Qualification of products.
401.503-1 Opportunity to qualify.
401.503-2 Testing of product.
401.503-3 Notification to manufacturer.
401.504 Qualified Product Lists.
401.504-1 Joint Army-Navy-Air Force lists.
401.504-2 Department lists.
401.504-3 Form and distribution of lists.
401.504-4 Promotional purposes.
401.504-5 Requirement that lists be kept open.
401.504-6 Withdrawal of approval.
401.505 Procurement of qualified products.
401.505-1 Contracts entered into by formal advertising.
401.505-2 Solicitation of bids.
401.505-3 Contracts entered into by negotiation.

AUTHORITY: §§ 401.000 to 401.505-3 issued under sec. 1 (a), (b), 54 Stat. 712, 55 Stat. 838, Pub. Law 413, 80th Cong.; 41 U. S. C. preceding sec. 1, note, 50 U. S. C. App. 601-622; E. O. 9001, Dec. 27, 1941, 3 CFR, cum. Supp.

§ 401.000 *Scope of part.* This part sets forth, on the basis of the provisions of and authority contained in the act, (a) the basic requirements for the procurement of supplies and services by means of formal advertising, (b) the information to be contained in forms used for the solicitation of bids, (c) methods of soliciting bids, (d) policies with respect to the submission of bids, (e) requirements for the opening and evaluation of bids and for the awarding of contracts, and (f) requirements for the procurement of qualified products.

SUBPART A—USE OF FORMAL ADVERTISING

§ 401.101 *Meaning of formal advertising.* As used throughout this subchapter, formal advertising means that method of procurement prescribed in this part with respect to competitive bids and awards.

§ 401.102 *Use of formal advertising.* In accordance with the basic policies set forth in Subpart C of Part 400 of this subchapter, procurement of supplies and services shall generally be effected by formal advertising. Bids shall be solicited from all such qualified sources of supplies or services as are deemed necessary by the Contracting Officer to assure such full and free competition as is consistent with the procurement of the required supplies or services. Current lists of bidders shall be maintained by each purchasing office.

§ 401.103 *General requirements for formal advertising.* No contract shall be entered into as a result of formal advertising unless and until all of the fol-

lowing requirements have been satisfied:

(a) Bids have been solicited in accordance with the requirements of Subpart B of this part;

(b) Bids have been submitted in accordance with the requirements of Subpart C of this part;

(c) All applicable requirements of law, of this subchapter, and of procedures prescribed by each respective Department have been met;

(d) Such business clearance or approval as is prescribed by applicable Department procedures has been obtained; and

(e) Award has been made to that responsible bidder whose bid, conforming to the Invitation for Bids, will be most advantageous to the Government, price and other factors considered, as prescribed in Subpart D of this part.

SUBPART B—SOLICITATION OF BIDS

§ 401.200 *Scope of subpart.* This subpart deals with (a) the preparation of forms to be used in the solicitation of bids, and (b) methods of soliciting bids.

§ 401.201 *Preparation of forms.* The form or forms to be used in the solicitation of bids should contain substantially the following information and any other information required by procedures prescribed by each respective Department.

(a) *Invitation for bids.*

(i) Invitation number.

(ii) Name and address of issuing activity.

(iii) Date of issuance.

(iv) Date, hour, and place of opening.

(b) *Bid.* Bid blanks are to be filled in by the bidder, and each bid is to be executed in accordance with instructions to bidders.

(c) *Schedule.*

(i) Number of pages.

(ii) Requisition (or other purchase authority), appropriation, and accounting data.

(iii) Discount provisions (including the removal of or changes in standard discount provisions whenever it is expected that prompt-payment discounts cannot be taken according to a time schedule set forth in the printed form).

(iv) Quantity of supplies or services to be furnished under each item, and any provision for quantity variation.

(v) Description of supplies or services to be furnished under each item, such description to be in accordance with the provisions of § 400.305 of this subchapter relating to specifications and with procedures prescribed by each respective Department.

(vi) Whenever specifications require prior testing and qualification of products, the right to reject bids offering products which do not meet this requirement of prior testing and qualification must be expressly reserved either in the specification itself or in the schedule. (See § 401.505-2.)

(vii) Time, place, and method of delivery.

(viii) Permission, if any, to submit telegraphic bids.

(ix) Permission, if any, to submit alternative bids, including alternative materials or designs.

(x) Requirement, in the case of advertising for the construction of Naval vessels, that the bidder file with his bid the estimates on which the bid is based.

(xi) Preservation, packaging, packing, and marking requirements, if any.

(xii) Place, method, and conditions of inspection.

(xiii) Bond and surety requirements, if any.

(xiv) Special provisions relating to such matters as Government-furnished property, progress payments, patent licenses, liquidated

damages, profit limitations, etc., *Provided*, That any such special provisions are authorized.

(d) *General provisions or conditions.* In addition to the special provisions set forth in the Schedule, each solicitation of bids shall include such general contract provisions or conditions as are required by law, by this subchapter, and by procedures prescribed by each respective Department.

§ 401.202 *Methods of soliciting bids.* Bids shall be solicited by the methods prescribed in §§ 401.202-1 and 401.202-2, and by any other of the following methods as are deemed necessary by the Contracting Officer in order to assure full and free competition, *Provided*, That (a) bids shall be solicited sufficiently in advance of the opening of bids to allow bidders an adequate opportunity to prepare and submit their bids, and (b) bids with respect to classified purchases shall be solicited in accordance with procedures prescribed by each respective Department.

§ 401.202-1 *Mailing or delivering to prospective bidders.* The form or forms to be used in the solicitation of bids shall be filled out and mailed (or delivered) to each prospective bidder.

§ 401.202-2 *Displaying in public place.* Copies of the form or forms to be used in the solicitation of bids shall be filled out and displayed at the purchasing office or at some other appropriate public place.

§ 401.202-3 *Publishing in trade journals.* A brief announcement of the proposed purchase may be made available for free publication to trade journals or magazines whose subscribers are manufacturers of or dealers in the supplies or services being procured.

§ 401.202-4 *Publishing in newspapers.* The essential details of any proposed purchase may be made available to newspapers for free publication. Paid advertisements in newspapers shall generally not be used; but when it is deemed necessary in order to secure effective competition, a brief announcement of the proposed purchase may be inserted in newspapers as paid advertisements, subject to the following conditions:

(a) Written authority for such publication has been obtained from the Secretary of the Department concerned or from his duly authorized representative;

(b) All requirements of law set forth in 44 U. S. C. 321-324 have been met; and

(c) The advertisement shall be prepared in accordance with General Regulations No. 109, issued December 20, 1946 by the General Accounting Office (26 Comp. Gen. 986)

§ 401.203 *Office of permanent record.* Each purchasing office is the office of permanent record for every invitation for bids issued and distributed by it and for every abstract or record of bids. The file of the invitation for bids should show the distribution which was made and the date thereof.

SUBPART C—SUBMISSION OF BIDS

§ 401.301 *Method of submission.* Bids shall be filled out, executed, and submitted by each bidder in accordance with the instructions accompanying the appropriate bid form. Neither tele-

graphic nor alternative bids shall be considered unless authorized by the invitation for bids or its accompanying papers.

§ 401.302 *Time of submission.* Bids shall be submitted in sufficient time to reach the designated office prior to the time fixed for opening. Bids received after the time fixed for opening are late bids; and the exact date and hour of mailing such bids, as shown by the cancellation stamp or by the stamp of an approved metering device, shall be recorded. Such late bids shall be considered: *Provided*, They are received before the award has been made, *And provided*, The failure to arrive on time was due solely to a delay in the mails for which the bidder was not responsible; otherwise, late bids shall not be considered but shall be held unopened until the time of award and then returned to the bidder, unless other disposition is requested or agreed to by the bidder.

§ 401.303 *Modification or withdrawal of bids.* Bids may be modified or withdrawn, at any time prior to the time fixed for opening thereof, by written or telegraphic notice received prior to the time fixed for opening. After the opening of bids, no bid may be modified (except as provided in §§ 401.404 and 401.405) or withdrawn unless such modification or withdrawal is received before the award has been made and either (a) failure of the modification or withdrawal to arrive prior to the time fixed for opening was due solely to a delay in the mails for which the bidder was not responsible or (b) modification is in the interest of the Government and not prejudicial to the other bidders.

SUBPART D—OPENING OF BIDS AND AWARD OF CONTRACT

§ 401.400 *Scope of subpart.* This subpart deals with (a) the opening and recording of bids, (b) the rejection of bids, (c) informalities, irregularities, and mistakes in bids, and (d) the evaluation of bids and the awarding of contracts.

§ 401.401 *Opening of bids.* All bids received prior to the time of opening will be kept secure and unopened until the time of opening (except that an unidentified bid may be opened solely for purposes of identification: *Provided*, That such bid shall be resealed immediately and that no information obtained therefrom shall be disclosed) whereupon they shall be publicly opened and read aloud by the Government official whose duty it is to open the bids. Whereas it is the primary responsibility of bidders to prepare their bids correctly and completely, nevertheless it is the duty of the Contracting Officer, after the opening of bids and prior to award, to examine all bids for minor informalities or irregularities and for obvious or apparent mistakes (as referred to in § 401.404 and 401.405 respectively). The original bids shall not be allowed to pass out of the hands of an official of the Government, except when a duplicate bid cannot be made available for public inspection, and then only under the immediate supervision of an official of the Government and under conditions which preclude the possibility of a substitution, addition, deletion, or alteration in the bid.

§ 401.402 *Recording of bids.* The names of the bidders and the prices bid shall be entered in an abstract or record which shall be available for public inspection. When the items are too numerous to warrant the recording of all bids completely, an entry shall be made of the opening date, invitation number, general description of the material, lot number, and total bid price. As soon as all bids have been opened and read, the official in charge shall make the certification in the record in accordance with procedures prescribed by each respective Department.

§ 401.403 *Rejection of bids.* Any bid which does not conform to the essential requirements of the invitation for bids shall be rejected: *Provided*, That any such bid may be considered when in the interest of the Government and not prejudicial to the other bidders. All bids may be rejected by the Contracting Officer (a) when rejection is in the interest of the Government, or (b) when he finds in writing that the bids are not reasonable, or were not independently arrived at in open competition, or are collusive, or were submitted in bad faith: *Provided*, That, if negotiation is to be used after any such rejection of all bids, the requirements of § 402.215 of this subchapter must be satisfied. The originals of all rejected bids, and any written findings with respect to rejections, shall be preserved with the papers relating to the proposed purchase. Reports of possible violations of the antitrust laws or of any other Federal criminal statutes relating to procurement shall be made by each respective Department in accordance with procedures prescribed by that Department: *Provided*, That any evidence of bids not independently arrived at shall be forwarded to the Department of Justice.

§ 401.404 *Minor informalities or irregularities in bids.* The Contracting Officer shall give to the bidder an opportunity to cure any deficiency resulting from a minor informality or irregularity in a bid, or in the alternative, when it is not to the disadvantage of the Government, may waive any such deficiency when time does not permit the curing thereof. Illustrative examples of minor informalities or irregularities are the following: inadvertent failure to furnish bid bond with bid; failure to affix corporate seal; failure to furnish required catalogs, cuts or descriptive data.

§ 401.405 *Mistakes in bids.*

§ 401.405-1 *Obvious or apparent mistakes of a clerical nature.* Any clerical mistake obvious or apparent on the face of a bid may be corrected by the Contracting Officer prior to award: *Provided*, There has first been obtained from the bidder, in response to a request for verification of the bid, a statement as to any such mistake therein. Illustrative examples of such obvious or apparent mistakes are the following: obvious error in placing decimal point; obvious discount errors (for example—1 per cent 10 days, 2 per cent 20 days, 5 per cent 30 days); erroneous quotations of a lower price f. o. b. destination than f. o. b. factory.

§ 401.405-2 *Mistakes other than obvious or apparent mistakes of a clerical nature.* In the case of any suspected or alleged mistake in a bid other than an obvious or apparent clerical mistake on the face of the bid, the Contracting Officer shall obtain from the bidder, prior to award, either a verification of the bid or evidence in support of the mistake, whereupon the case shall be processed to the General Accounting Office in accordance with procedures prescribed by each respective Department: *Provided*, That:

(a) If the bidder fails or refuses to furnish evidence in support of the mistake, the Contracting Officer shall consider the bid in the form submitted; or

(b) If time does not permit processing in accordance with customary procedures, and if there is no room for doubt as to the price or other terms intended in the bid in which a mistake occurred, the Contracting Officer (1) in the case of a mistake in the lowest bid which as clearly intended would not be the lowest bid, may disregard such bid, or (2) in the case of a mistake in the lowest bid which as clearly intended would still be the lowest bid, shall make the award on the basis of such low bid as originally submitted, but subject to correction if authorized by the General Accounting Office, or (3) in the case of a mistake in any bid other than the lowest bid, shall consider such bid on the basis of its price or other terms as clearly intended.

Whenever a mistake in bid is to be processed in accordance with customary procedures, the following papers should accompany a copy of the bid which contains the suspected or alleged mistake:

(i) A copy of the invitation for bids;

(ii) An abstract or record of bids received;

(iii) A statement from the bidder, and any additional supporting evidence such as work sheets or other data used in preparing the bid, setting forth the complete facts on which the allegation of mistake is based and requesting such definite relief as withdrawal of the bid, change in bid price, etc., and

(iv) A statement from the Contracting Officer showing the date when notice of the alleged mistake was received, and any additional information he may have as to the alleged mistake, together with his recommendations.

§ 401.405-3 *Disclosure of mistakes after award.* When an alleged mistake in a bid is disclosed after award has been made, the case shall be processed in accordance with procedures prescribed by each respective Department.

§ 401.406 *Award.* Award shall be made with reasonable promptness by written notice to that responsible bidder whose bid, conforming to the invitation for bids, will be most advantageous to the Government, price and other factors considered: *Provided*, That an award shall not be made to other than the lowest responsible bidder except in accordance with procedures prescribed by each respective Department. Award will be effected by mailing or delivering to the bidder a properly executed award or preliminary notice of award.

§ 401.406-1 *Responsible bidder*. A "responsible bidder" is a bidder who satisfies all of the following requirements:

(a) Is a manufacturer or regular dealer, as defined in § 400.201-9;

(b) Is financially and otherwise able to perform the contract; and

(c) Is otherwise qualified and eligible by law and under this subchapter.

§ 401.406-2 *Discounts*. In determining which of several bids received is the lowest, any discount offered shall be deducted from the bid price under the assumption that the discount shall be taken, unless it is known with reasonable certainty that the Government cannot take advantage of the discount within the time specified. If, when the bids are opened, facts become known which render it necessary to disregard a discount, a full statement of the facts and circumstances and of the reasons for the action taken shall be entered upon the abstract or record of bids and on U. S. Standard Form 1036 (as referred to in § 401.406-5) whenever such bid would have been the lowest bid received if the discount offered were taken.

§ 401.406-3 *Other factors to be considered*. Among other factors besides price that may be considered in making an award are the following:

(a) Judgment, skill, and integrity of a bidder;

(b) Reputation and experience of a bidder, and prior work of a similar nature done by him;

(c) Foreseeable costs or delays to the Government resulting from differences in inspection, shipping, location of supplies, etc.,

(d) Changes made or requested in any of the provisions of the solicitation, to the extent that any such change does not constitute ground for rejection of the bid under the provisions of § 401.403;

(e) Restrictions or conditions imposed in the bid; and

(f) Advantages or disadvantages to the Government that might result from making multiple awards.

§ 401.406-4 *Equal bids*. (a) When two or more bids are equal in all respects (taking into consideration cost of transportation, cash discounts, and any other factor properly to be considered) award shall be made by a drawing by lot which shall be witnessed by at least three persons and which may be attended by the bidders or their representatives.

(b) When award is to be made by lot and the information available shows that the product of a particular manufacturer is offered by more than one bidder, a preliminary drawing by lot shall be made to ascertain which of the bidders offering the product of a particular manufacturer will be included in the final drawing to determine the award.

§ 401.406-5 *Statement and certificate of award*. In connection with every purchase made by formal advertising, the Contracting Officer shall prepare and execute a statement and certificate of award on U. S. Standard Form 1036, which shall be attached to the original documents and papers constituting the contract which are forwarded to the General Accounting Office. Such cer-

tificate shall either (a) state that the accepted bid was the lowest bid received, or (b) list all lower bids and set forth reasons for accepting a bid other than the lowest.

§ 401.407 *Information to bidders*. To the extent reasonable and practicable, and in accordance with procedures prescribed by each respective Department, any bidder or his authorized representative shall be furnished with authorized information in response to proper questions, including the names of the successful bidders and the prices at which awards were made for items on which the inquirer submitted bids, or in the alternative shall be informed that a copy of the abstract or record of bids is available for inspection at the purchasing office.

SUBPART E—QUALIFIED PRODUCTS

§ 401.500 *Scope of subpart*. This subpart deals with (a) Qualified Products, (b) lists of such products established by each respective Department and by the Army-Navy Joint Specifications Board, and (c) the purpose and use of such lists in connection with the procurement of supplies.

§ 401.501 *Authority for Qualified Products*. In those instances where it has been shown to be necessary in the light of existing performance requirements to obtain products of requisite quality, each Department may subject certain products and materials to qualification test, and may approve them for use. The results of such testing and approval may be set forth in a Qualified Products List. Such lists, together with the Qualified Products Lists established by the Army-Navy Joint Specifications Board, shall be used for the purpose and in the manner set forth in this subpart.

§ 401.502 *Justification for inclusion of products on Qualified Products List*. A product may be included in any Qualified Products List only when one of the following conditions exists:

(a) The time required for testing after award would unduly delay delivery of the supplies being purchased;

(b) The cost of repetitive testing would be excessive;

(c) The tests would require expensive or complicated testing apparatus not commonly available;

(d) The interest of the Government requires assurance, prior to award, that the product is satisfactory for its intended use;

(e) The determination of acceptability would require performance data to supplement technical requirements contained in the specifications.

§ 401.503 *Qualification of products*.

§ 401.503-1 *Opportunity to qualify*. Upon determination that a product is to be covered by a Qualified Products List, opportunity shall be given, and manufacturers urged, to submit for qualification tests any product of the general type desired. Publicity shall be given to the following:

(a) Intention to place a product on a Qualified Products List; and

(b) In making future awards, the fact that consideration may be given only to

such products as have been accepted for inclusion in a Qualified Products List.

§ 401.503-2 *Testing of product*. The manner, extent, and cost of testing shall be in accordance with procedures prescribed by each respective Department. Each Department shall inform the other Departments of such tests, and upon request shall furnish reports thereon to the other Departments. As a result of such testing each Department shall decide whether or not the product should be placed on the Qualified Products List of that Department. Products tested and qualified by any Department may be included in the Qualified Products List of any other Department.

§ 401.503-3 *Notification to manufacturer*. Each Department shall notify the manufacturer submitting a product for test of the approval or rejection of the product. In the event that the product is approved for inclusion in a Qualified Products List, notification thereof shall be given to the manufacturer together with a statement to the effect that such listing does not (a) guarantee acceptance of the product in any future purchase, (b) constitute a waiver of the requirements of the schedule or the specifications as to acceptance, inspection, testing, or other provisions of any contract involving such product, or (c) permit any statement of approval to be reproduced, circulated, referred to or otherwise used for private commercial sales, promotional or advertising purposes, and that if so used such approval is subject to cancellation by the Department concerned. In the event that the product is not approved for inclusion in a Qualified Products List, notice thereof shall be given to the manufacturer, with a report covering the results obtained by the test. Whether a product is approved or rejected, it will be returned after test to the manufacturer "as is" (unless destroyed in testing).

§ 401.504 *Qualified Products Lists*. Products qualified by qualification tests, as described in § 401.503, shall be listed for reference by the Departments. The information contained in these lists may be made available to interested bidders or contractors whenever specifications or solicitations of bids require qualified products.

§ 401.504-1 *Joint Army - Navy - Air Force lists*. Where qualification is in accordance with tests prescribed by Joint Army-Navy-Air Force specifications, the compilation, preparation, maintenance, and administration of Qualified Products Lists shall be in accordance with the requirements of the Army-Navy Joint Specifications Board.

§ 401.504-2 *Department lists*. Where qualification is in accordance with tests prescribed by a Department, Qualified Products Lists shall be compiled, prepared, maintained, and administered in accordance with procedures prescribed by each respective Department.

§ 401.504-3 *Form and distribution of lists*. Each Qualified Products List shall include substantially the following information: Government designation, manufacturer's designation, test or qual-

ification reference, and manufacturer's name and address. Each Department shall furnish copies of its list (including changes thereto) to each of the other Departments.

§ 401.504-4 *Promotional purposes.* No Department shall authorize the reproduction of lists or any reference to lists, in whole or in part, for advertising or promotional purposes except in connection with or for the purpose of furnishing supplies to a Department.

§ 401.504-5 *Requirement that lists be kept open.* The lists shall always be open for inclusion of products from additional manufacturers as their products are submitted for qualification and become qualified.

§ 401.504-6 *Withdrawal of approval.* The approval of a product may be withdrawn by the Department concerned if it is subsequently determined that the product does not meet requirements. In such event, the manufacturer shall be notified that his product is being considered for withdrawal from a Qualified Products List, and the reasons therefor shall be communicated to him. If, after a reasonable length of time, no satisfactory response has been received from such manufacturer in answer to such communication, and it is decided by the Department concerned that approval should be withdrawn, the manufacturer shall be notified of such withdrawal. A product may be removed from a list at the request of a manufacturer.

§ 401.505 *Procurement of qualified products.*

§ 401.505-1 *Contracts entered into by formal advertising.* Whenever procurement of qualified products by a Department is made pursuant to formal advertising in accordance with the provisions of this part, only bids offering products which have been approved or qualified need be considered in making an award. Manufacturers having products not listed should be given consideration and an opportunity to qualify if qualification testing of the product may be accomplished in the time interval before final award must be made.

§ 401.505-2 *Solicitation of bids.* Each solicitation of bids involving qualified products shall be distributed to known sources of supplies in accordance with the requirements of Subparts A and B of this part, and shall contain a statement substantially as follows:

In the procurement of products requiring qualification the right is reserved to reject bids on products that have not been subjected to the required test and found satisfactory for inclusion in the Qualified Products List of (insert designation of particular list or lists). The attention of suppliers is called to this requirement, and manufacturers are urged to communicate with the (insert name and address of sources of information) and arrange to have the products that they propose to offer tested for qualification.

§ 401.505-3 *Contracts entered into by negotiation.* Nothing in this subpart shall be construed to prohibit reference to Qualified Products Lists for prospective sources of supplies in connection with

contracts entered into by negotiation pursuant to Part 402 of this subchapter.

PART 402—PROCUREMENT BY NEGOTIATION

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AUTHORITY: §§ 402.000 to 402.505 issued under sec. 1 (a), (b), 64 Stat. 712, 55 Stat. 638, Pub. Law 413, 80th Cong.; 41 U. S. C. preceding sec. 1 note, 59 U. S. C. App. 601-622, E. O. 9001, Dec. 27, 1941, 3 CFR, Cum. Supp.

§ 402.000 *Scope of part.* This part sets forth, on the basis of the provisions of and authority contained in the act, (a) the basic requirements for the procurement of supplies and services by means of negotiation, (b) the different circumstances under which negotiation is permitted, (c) determinations and findings that may be required to be made before a contract is entered into by negotiation, (d) approved types of negotiated contracts and their use, and (e) the authority for making advance payments under negotiated contracts.

SUBPART A—USE OF NEGOTIATION

§ 402.100 *Scope of subpart.* This subpart deals with the nature and use of negotiation as distinguished from

formal advertising, and with limitations upon that use.

§ 402.101 *Negotiation as distinguished from formal advertising.* As used throughout this subchapter, negotiation means that method of procurement under which the procedures for procurement by formal advertising, as set forth in Part 401 of this subchapter, are not required. Whenever supplies or services are to be procured by negotiation, price quotations, supported by statements and analyses of estimated costs or other evidence of reasonable prices and other vital matters deemed necessary by the Contracting Officer, shall be solicited from all such qualified sources of supplies or services as are deemed necessary by the Contracting Officer to assure full and free competition consistent with the procurement of the required supplies or services, in accordance with the basic policies set forth in Subpart C of Part 400 of this subchapter, to the end that the procurement will be made to the best advantage of the Government, price and other factors considered. Negotiation shall thereupon be conducted, by Contracting Officers and their negotiators, with due attention being given to the following and any other appropriate factors:

(a) Comparison of prices quoted, and consideration of other prices for the same or similar supplies or services, with due regard to cost of transportation, cash discounts, and any other factor relating to price;

(b) Comparison of the business reputations and responsibilities of the respective persons or firms who submit quotations;

(c) Consideration of the quality of the supplies or services offered, or of the same or similar supplies or services previously furnished, with due regard to the satisfaction of technical requirements;

(d) Consideration of delivery requirements;

(e) Discriminating use of price and cost analyses;

(f) Investigation of price aspects of any important subcontract;

(g) Individual bargaining, by mail or by conference;

(h) Consideration of cost sharing; and

(i) Effective utilization in general of the most desirable type of contract, and in particular of contract provisions relating to price redetermination.

§ 402.102 *General requirements for negotiation.* No contract shall be entered into as a result of negotiation unless or until the following requirements have been satisfied:

(a) The contemplated procurement comes within one of the circumstances permitting negotiation enumerated in Subpart B of this part;

(b) Any necessary determinations and findings prescribed in Subpart C of this part have been made; and

(c) Such business clearance or approval as is prescribed by applicable Department procedures has been obtained.

§ 402.103 *Records and reports of negotiated contracts.* In addition to the records and reports required by the provisions of § 400.302-3 of this subchapter,

and §§ 402.211-4 and 402.216-4, each Department shall maintain a record of the total value of all contracts negotiated by it during each fiscal year (beginning with that portion of the current fiscal year during which the act is effective) under each of the circumstances permitting negotiation enumerated in Subpart B of this part, and shall prepare an annual report thereon, as of the end of each fiscal year and in the form and manner to be prescribed by the Department, to be submitted to the Munitions Board in the National Military Establishment for the preparation of a combined Armed Services report to be submitted to the President.

SUBPART B—CIRCUMSTANCES PERMITTING NEGOTIATION

§ 402.200 *Scope of subpart.* Subject to the limitations prescribed in Subpart A of this part, and pursuant to the authority of section 2 (c) of the act, procurement may be effected by negotiation, and contracts may be entered into as a result of negotiation without formal advertising, under any one of the circumstances set forth in the following sections of this subpart.

§ 402.201 *National emergency.*

§ 402.201-1 *Authorization.* Pursuant to the authority of section 2 (c) (1) of the act, purchases and contracts may be negotiated without formal advertising if: "determined to be necessary in the public interest during the period of a national emergency declared by the President or by the Congress."

§ 402.201-2 *Application.* This authority shall be used only to the extent determined by the Secretary concerned to be necessary in the public interest and then only in accordance with procedures prescribed by each respective Department.

§ 402.202 *Public exigency.*

§ 402.202-1 *Authorization.* Pursuant to the authority of section 2 (c) (2) of the act, purchases and contracts may be negotiated without formal advertising if: "the public exigency will not admit of the delay incident to advertising."

§ 402.202-2 *Application.* In order for this authority to be used, the need must be compelling and of unusual urgency, as when the Government would be seriously injured, financially or otherwise, if the supplies or services were not furnished by a certain date, and when they could not be procured by that date by means of formal advertising. The following are illustrative of circumstances with respect to which this authority may be used:

(a) Supplies or services needed at once because of a fire, flood, explosion, or other disaster;

(b) Essential equipment for or repair to a ship when such equipment or repair is needed at once for compliance with the orders of the ship;

(c) Essential equipment for or repair to aircraft grounded or about to be grounded, when such equipment or repair is needed at once for the performance of the operational mission of such aircraft.

§ 402.202-3 *Limitation.* Every contract that is negotiated under the authority of this section shall be accompanied by a signed statement of the contracting officer justifying its use, and a copy of such statement shall be sent to the General Accounting Office with the copy of the contract negotiated and executed hereunder.

§ 402.203 *Purchases not in excess of \$1,000.*

§ 402.203-1 *Authorization.* Pursuant to the authority of section 2 (c) (3) of the act, purchases and contracts may be negotiated without formal advertising if: "the aggregate amount involved does not exceed \$1,000."

§ 402.203-2 *Application.* Purchases or contracts aggregating \$1,000 or less shall be made under this section rather than under any other provision of this part. In arriving at "the aggregate amount involved," there must be included all supplies and services which would properly be grouped together in a single transaction, and which would be included in a single advertisement for bids if the procurement were being effected by formal advertising. Purchases or contracts aggregating more than \$1,000 shall not be broken down into several purchases or contracts which are less than \$1,000, nor shall customary purchasing or contracting procedures be altered, merely for the purpose of permitting negotiation under this section.

§ 402.204 *Personal or professional services.*

§ 402.204-1 *Authorization.* Pursuant to the authority of section 2 (c) (4) of the act, purchases and contracts may be negotiated without formal advertising if: "for personal or professional services."

§ 402.204-2 *Application.* This authority shall be used only when all of the following conditions have been satisfied:

(a) If personal services, they are required to be performed by an individual contractor in person (not by a firm), or if professional services, they may be performed either by an individual contractor in person or a firm or organization;

(b) The services (1) are of a professional nature, or (2) are to be performed under Government supervision and paid for on a time basis;

(c) Procurement of the services is authorized by law, and is effected in accordance with the requirements of any such law and in accordance with procedures prescribed by each respective Department.

This authority, and the above conditions imposed upon its use, shall not apply to the procurement by negotiation of any type of services authorized under any other provision of this part.

§ 402.205 *Services of educational institutions.*

§ 402.205-1 *Authorization.* Pursuant to the authority of section 2 (c) (5) of the act, purchases and contracts may be negotiated without formal advertising if: "for any service to be rendered by any

university, college, or other educational institution."

§ 402.205-2 *Application*. The following are illustrative of circumstances with respect to which this authority may be used:

(a) Educational or vocational training services to be rendered by any university, college, or other educational institution in connection with the training and education of personnel, and for necessary material, services, and supplies furnished by any such institution in connection therewith;

(b) Experimental, developmental, or research work (including services, tests, and reports necessary or incidental thereto) to be conducted by any university, college, or other educational institution, and reports furnished in connection therewith;

(c) Analyses, studies, or reports (statistical or otherwise) to be conducted by any university, college, or other educational institution.

§ 402.206 *Purchases outside the United States*.

§ 402.206-1 *Authorization*. Pursuant to the authority of section 2 (c) (6) of the act, purchases and contracts may be negotiated without formal advertising if: "the supplies or services are to be procured and used outside the limits of the United States and its possessions."

§ 402.206-2 *Application*. This authority shall be used only for the procurement of supplies or services which are actually purchased and used outside the limits of the United States and its possessions (irrespective of the actual place of negotiation or execution of the contract) such as supplies, construction or services for overseas installations or for the use of overseas forces.

§ 402.207 *Medicines or medical supplies*.

§ 402.207-1 *Authorization*. Pursuant to the authority of section 2 (c) (7) of the act, purchases and contracts may be negotiated without formal advertising if: "for medicines or medical supplies."

§ 402.207-2 *Application*. This authority shall be used only when the following two requirements have been satisfied:

(a) Such supplies are peculiar to the field of medicine, and include technical equipment such as surgical instruments, surgical and orthopedic appliances, X-ray supplies and equipment, and the like, but do not include prosthetic equipment; and

(b) Whenever the probable cost of medicines or medical supplies purchased by negotiation under this section will exceed \$10,000, suitable advance publicity of the proposed purchase shall be given, with the form and extent of such publicity (which shall be given for a period of at least 15 days wherever practicable) to be determined in accordance with procedures prescribed by each respective Department.

§ 402.208 *Supplies purchased for authorized resale*.

§ 402.208-1 *Authorization*. Pursuant to the authority of section 2 (c) (8) of the

act, purchases and contracts may be negotiated without formal advertising if: "for supplies purchased for authorized resale."

§ 402.208-2 *Application*. This authority shall be used only for purchases for resale, where appropriated funds are involved, and ordinarily only for purchases of articles with brand names or of a proprietary nature as required by patrons of the selling activity. In any event, however, when the probable cost of such supplies will exceed \$10,000, suitable advance publicity of the proposed purchase shall be given, with the form and extent of such publicity (which shall be given for a period of at least 15 days wherever practicable) to be determined in accordance with procedures prescribed by each respective Department.

§ 402.209 *Perishable subsistence supplies*.

§ 402.209-1 *Authorization*. Pursuant to the authority of section 2 (c) (9) of the act, purchases and contracts may be negotiated without formal advertising if "for perishable subsistence supplies."

§ 402.209-2 *Application*. This authority may be used for the purchase of any and all kinds of perishable subsistence.

§ 402.210 *Supplies or service for which it is impracticable to secure competition by formal advertising*.

§ 402.210-1 *Authorization*. Pursuant to the authority of section 2 (c) (10) of the act, purchases and contracts may be negotiated without formal advertising if: "for supplies or services for which it is impracticable to secure competition."

§ 402.210-2 *Application*. The following are illustrative of circumstances with respect to which this authority may be used:

(a) When the supplies or services can be obtained from only one person or firm ("sole source of supply");

(b) When competition is precluded because of the existence of patent rights, copyrights, secret processes, control of basic raw material, or similar circumstances;

(c) When bids have been solicited pursuant to the requirements of Part 401 of this subchapter, and no responsive bid (a responsive bid is any bid which conforms to the essential requirements of the solicitation of bids) has been received from a responsible bidder;

(d) When bids have been solicited pursuant to the requirements of Part 401 of this subchapter, and the responsive bid or bids do not cover the quantitative requirements of the solicitation of bids, in which case negotiation is permitted for the remaining requirements of the solicitation of bids;

(e) When the contemplated procurement is for electric power or energy, gas (natural or manufactured), water, or other utility services;

(f) When the contemplated procurement is for training film, motion picture productions, or manuscripts;

(g) When the contemplated procurement is for technical, non-personal services in connection with the assembly, installation, or servicing (or the instruction

of personnel therein) of equipment of a highly technical or specialized nature;

(h) When the contemplated procurement is for studies or surveys covering industrial mobilization planning;

(i) When the contemplated procurement involves maintenance, repair, alterations or inspection, in connection with any one of which types of services the exact nature or amount of the work to be done is not known;

(j) When the contemplated procurement is for stevedoring, terminal, warehousing, or switching services, and when either the rates are established by law or regulation or the rates are so numerous or complex that it is impracticable to set them forth in the specifications of a formal solicitation of bids;

(k) When the contemplated procurement is for commercial ocean or air transportation, including time charters, space charters and voyage charters over trade routes not covered by common carriers (as to which, negotiation is authorized under the provisions of § 402.217 and section 321 of Part III of the Interstate Commerce Act of September 18, 1940, 49 U. S. C. 65), and including services for the operation of Government-owned vessels or aircraft;

(l) When the contract is for services related to the procurement of perishable subsistence such as protective storage, icing, processing, packaging, handling and transportation whenever it is impracticable to advertise for such services a sufficient time in advance of the delivery of the perishable subsistence;

(m) When it is impossible to draft, for a solicitation of bids, adequate specifications or any other adequately detailed description of the required supplies or services.

§ 402.210-3 *Limitation*. The authority of this section shall not be used when negotiation is authorized by the provisions of §§ 402.211, 402.212, 402.213, 402.214, 402.215, or 402.216. Every contract that is negotiated under the authority of §§ 402.210 to 402.210-3, shall be accompanied by a signed statement of the Contracting Officer justifying its use, and a copy of such statement shall be sent to the General Accounting Office with a copy of the contract negotiated and executed hereunder."

§ 402.211 *Experimental, developmental, or research work*.

§ 402.211-1 *Authorization*. Pursuant to the authority of section 2 (c) (11) of the act, purchases and contracts may be negotiated without formal advertising if the Secretary: "determines that the purchase or contract is for experimental, developmental, or research work, or for the manufacture or furnishing of supplies for experimentation, development, research, or test"; *Provided*, That in the case of contracts for \$25,000 or less, the head of a procuring activity, signing as "a chief officer responsible for procurement," is authorized without power of redelegation to make the required determination.

§ 402.211-3 *Application*. The following are illustrative of circumstances with respect to which this authority may be used:

(a) Contracts relating to theoretical analysis, exploratory studies, and experimentation in any field of science or technology.

(b) Developmental contracts calling for the practical application of investigative findings and theories of a scientific or technical nature;

(c) The purchase of such quantities and kinds of equipment, supplies, parts, accessories, or patent rights thereto, and drawings or designs thereof, as are necessary for experimentation, development, research, or test;

(d) Services, tests, and reports necessary or incidental to experimental, developmental, or research work.

This authority shall not be used for contracts for quantity production except that such quantities may be purchased hereunder as are necessary to permit complete and adequate experimentation, development, research or test; however, research or development contracts which call for the production of a reasonable number of experimental or test models, or prototypes, shall not be regarded as contracts for quantity production.

§ 402.211-3 *Limitation*. In order for this authority to be used, the required determination to be made by any Secretary (or, in the case of contracts for \$25,000 or less, by the head of any purchasing activity signing as "a chief officer responsible for procurement") must be made in accordance with the requirements of Subpart C of this part.

§ 402.211-4 *Records and reports*. Each Department shall maintain a record of the name of each contractor with whom a contract has been entered into pursuant to the authority of this section, together with the amount of the contract and (with due consideration given to the National security) a description of the work required to be performed thereunder, and shall prepare a report thereon, at the end of the current fiscal year (covering that portion of the current fiscal year during which this subchapter is effective) and at the end of each six-month period thereafter, and in the form and manner to be prescribed by the Department, to be submitted to the Munitions Board in the National Military Establishment for the preparation of a combined Armed Services report to be submitted semi-annually to the Congress.

§ 402.212 *Classified purchases*.

§ 402.212-1 *Authorization*. Pursuant to the authority of section 2 (c) (12) of the act, purchases and contracts may be negotiated without formal advertising if: "for supplies or services as to which the Secretary determines that the character, ingredients, or components thereof are such that the purchase or contract should not be publicly disclosed."

§ 402.212-2 *Application*. This authority shall be used only when military considerations necessitate security, and then only for such purchases or contracts as are classified confidential or higher.

§ 402.212-3 *Limitation*. In order for this authority to be used, the required determination to be made by any Secre-

tary must be made in accordance with the requirements of Subpart C of this part.

§ 402.213 *Technical equipment requiring standardization and interchangeability of parts*.

§ 402.213-1 *Authorization*. Pursuant to the authority of section 2 (c) (13) of the act, purchases and contracts may be negotiated without formal advertising if: "for equipment which the Secretary determines to be technical equipment, and as to which he determines that the procurement thereof without advertising is necessary in order to assure standardization of equipment and interchangeability of parts and that such standardization and interchangeability is necessary in the public interest."

§ 402.213-2 *Application*. This authority may be used for procuring additional units and replacement items of technical equipment and spare parts which have been standardized in accordance with procedures prescribed by each respective Department. This authority would apply, for example, whenever it is necessary:

(a) To limit the quantity of spare parts that must be carried in stock; or

(b) To make possible, by standardization, the availability of parts that may be interchanged among pieces of damaged equipment during combat or other emergency; or

(c) To procure from one supplier technical equipment which is available from a number of suppliers but which would have such varying performance characteristics (notwithstanding detailed specifications and rigid inspection) as would prevent standardization and interchangeability of parts.

§ 402.213-3 *Limitation*. This authority shall not be used for initial procurements of equipment and spare parts which will ultimately be standardized, or for the purpose of selecting arbitrarily the equipment of certain suppliers; nor shall it be used unless and until the Secretary of a Department has determined, in accordance with the requirements of Subpart C of this part, that:

(a) The supplies constitute technical equipment or component parts thereof; and

(b) Negotiation is necessary in order to assure standardization of the equipment and interchangeability of parts; and

(c) Such standardization and interchangeability is necessary in the public interest.

§ 402.214 *Technical or specialized supplies requiring substantial initial investment or extended period of preparation for manufacture*.

§ 402.214-1 *Authorization*. Pursuant to the authority of section 2 (c) (14) of the act, purchases and contracts may be negotiated without formal advertising if: "for supplies of a technical or specialized nature requiring a substantial initial investment or an extended period of preparation for manufacture, as determined by the Secretary, when he determines that advertising and competitive bidding may require duplication of in-

vestment or preparation already made, or will unduly delay procurement of such supplies."

§ 402.214-2 *Application*. This authority may be used for the procurement of technical or specialized supplies—for example: aircraft, tanks, radar, guided missiles, rockets, and similar items of equipment; major components of any of the foregoing; and any supplies of a technical or specialized nature which may be necessary for the use or operation of any of the foregoing. Such procurement generally involves:

(a) High starting costs which already have been paid for by the Government or by the supplier;

(b) Preliminary engineering and development work that would not be useful to or usable by any other supplier;

(c) Elaborate special tooling already acquired;

(d) Substantial time and effort already expended in developing a prototype or an initial production model; and

(e) Important design changes which will continue to be developed by the supplier.

The authority of this section will in general be used in situations where it is preferable to place a production contract with the supplier who had developed the equipment, and thereby either assure to the Government the benefit of the techniques, tooling, and equipment already acquired by that supplier, or avoid undue delay arising from a new supplier having to acquire such techniques, tooling, and equipment.

§ 402.214-3 *Limitation*. This authority shall not be used unless and until the Secretary of a Department has determined, in accordance with the requirements of Subpart C of this part, that:

(a) The supplies are of a technical or specialized nature requiring a substantial investment or an extended period of preparation for manufacture; and

(b) Procurement by formal advertising and competitive bidding either:

(1) May require duplication of investment or preparation already made, or

(2) Will unduly delay procurement.

§ 402.215 *Negotiation after advertising*.

§ 402.215-1 *Authorization*. Pursuant to the authority of section 2 (c) (15) of the act, purchases and contracts may be negotiated without formal advertising if: "for supplies or services as to which the Secretary determines that the bid prices after advertising therefor are not reasonable or have not been independently arrived at in open competition."

§ 402.215-2 *Limitation*. This authority shall not be used unless and until the Secretary of a Department has determined, in accordance with the requirements of Subpart C of this part, that the bid prices, after formal advertising for such supplies or services, are not reasonable or have not been independently arrived at in open competition. However, after such determination by the Secretary, and after a rejection of all bids, no contract shall be negotiated under this authority unless:

(a) Prior notice of intention to negotiate and a reasonable opportunity to negotiate have been given by a Contracting Officer to each responsible bidder whose bid has been rejected; and

(b) The negotiated price is lower than the lowest rejected bid price of a responsible bidder, as determined by the Secretary; and

(c) The negotiated price is the lowest negotiated price offered by any responsible supplier.

Moreover, any evidence of bids not independently arrived at shall be forwarded to the Department of Justice, as provided in § 401.403 of this subchapter.

§ 402.216 Purchases in the interest of national defense or industrial mobilization.

§ 402.216-1 Authorization. Pursuant to the authority of section 2 (c) (16) of the act, purchases and contracts may be negotiated without formal advertising if: "the Secretary determines that it is in the interest of the national defense that any plant, mine, or facility or any producer, manufacturer, or other supplier be made or kept available for furnishing supplies or services in the event of a national emergency, or that the interest either of industrial mobilization in case of such an emergency, or of the national defense in maintaining active engineering, research and development, are otherwise subserved."

§ 402.216-2 Application. This authority may be used to effectuate such plans and programs as may be evolved under the direction of the Secretary of a Department to provide incentives to manufacturers to maintain, and keep active, engineering and design staffs and manufacturing facilities available for mass production. The following are illustrative of circumstances with respect to which this authority may be used:

(a) Procurement by negotiation is necessary to keep vital facilities or suppliers in business; or to make them available in the event of a national emergency;

(b) Procurement by negotiation with selected suppliers is necessary in order to train them in the furnishing of critical supplies to prevent the loss of their ability and employee skills, or to maintain active engineering, research, or development work;

(c) Procurement by negotiation is necessary to maintain properly balanced sources of supply for meeting the requirements of procurement programs in the interest of industrial mobilization.

§ 402.216-3 Limitation. This authority shall not be used unless and until the Secretary of a Department has determined, in accordance with the requirements of Subpart C of this part, that:

(a) It is in the interest of national defense that a particular facility or supplier be made or kept available for furnishing supplies or services in the event of a national emergency, and procurement by negotiation is necessary to that end; or

(b) The interest of industrial mobilization, in the event of a national emergency, would be promoted by procure-

ment by negotiation with such a supplier; or

(c) In maintaining active engineering, research, and development, the interest of the national defense would be promoted by procurement by negotiation with such a supplier.

§ 402.216-4 Records and reports. Each Department shall maintain a record of the name of each contractor with whom a contract has been entered into pursuant to the authority of this section, together with the amount of the contract and (with due consideration given to the national security) a description of the work required to be performed thereunder, and shall prepare a report thereon, at the end of the current fiscal year (covering that portion of the current fiscal year during which this subchapter is effective) and at the end of each six-month period thereafter, and in the form and manner to be prescribed by the Department, to be submitted to the Munitions Board in the National Military Establishment for the preparation of a combined Armed Services report to be submitted semi-annually to the Congress.

§ 402.217 Otherwise authorized by law.

§ 402.217-1 Authorization. Pursuant to the authority of section 2 (c) (17) of the act, purchases and contracts may be negotiated without formal advertising if: "otherwise authorized by law."

§ 402.217-2 Application. This authority shall be used only if and to the extent approved for any Department in accordance with procedures prescribed by that Department.

§ 402.218 Construction work.

§ 402.218-1 Authorization. As provided in section 2 (e) of the act, contracts for construction work may be negotiated without formal advertising if the following two requirements have been satisfied:

(a) The contract is for: "the erection, repair, or furnishing of any public building or public improvement . . . or the construction or repair of buildings, roads, sidewalks, sewers, mains, or similar items"; and

(b) Either (1) "the contract is to be performed outside the continental United States" or (2) "negotiation of such contract is authorized by the provisions of paragraph (1), (2), (3), (10), (11) 12), or (15) of subsection (c)" of section 2 of the act.

§ 402.218-2 Limitation. This authority shall be used only when the requirements set forth in the preceding § 402.218-1 have been satisfied, and when all provisions of any applicable paragraph of the act (as implemented and construed, in terms of policy, by the respective preceding sections of Subpart C of this part relating thereto) have been complied with.

SUBPART C—DETERMINATIONS AND FINDINGS

§ 402.300 Scope of subpart. This subpart (a) enumerates the particular determinations and findings to be made (1) by the Secretary of any Department, (2)

by the head of any procuring activity signing as "a chief officer responsible for procurement," and (3) by a Contracting Officer; and (b) sets forth the requirements to be followed with respect to such determinations and findings.

§ 402.301 Nature of determinations and findings. The determinations and supporting findings that are referred to throughout this subchapter, usually as prerequisites to the authority of a procuring activity to enter into contracts by negotiation or to make advance payments under negotiated contracts, will in most instances be made by the Secretary of a Department. Such determinations and findings shall ordinarily be made only with respect to individual purchases or contracts, but may be made with respect to classes of purchases or contracts in special cases and then only for a specified period and in accordance with procedures prescribed by each respective Department. Certain determinations, as hereinafter provided, may be made by the head of a procuring activity signing as "a chief officer responsible for procurement" or by a Contracting Officer, but in either of these two cases only with respect to individual purchases or contracts.

§ 402.302 Determinations and findings by the Secretary of a Department. The following determinations, and written findings in support thereof, may be made only by the Secretary of a Department, and are not delegated hereunder except to the extent provided in § 402.303:

(a) The determination required by § 402.211 with respect to any negotiated contract for experimental, developmental, or research work or for the manufacture or furnishing of supplies for experimentation, development, research, or test;

(b) The determination required by § 402.212 with respect to any negotiated contract that should not be publicly disclosed;

(c) The determination required by § 402.213 with respect to any negotiated contract for technical equipment requiring standardization and interchangeability of parts;

(d) The determination required by § 402.214 with respect to any negotiated contract for technical or specialized supplies requiring a substantial initial investment or an extended period of preparation for manufacture;

(e) The determination required by § 402.215 with respect to any negotiated contract entered into after advertising has proved unsatisfactory;

(f) The determination required by § 402.216 with respect to any negotiated contract entered into in the interest of national defense or industrial mobilization;

(g) The determination required in Subpart E of this part with respect to advance payments under any negotiated contract.

In addition to the foregoing determinations, the Secretary of any Department may also make any of the determinations, and written findings in support thereof, that may be made by the head of any procuring activity signing as "a

chief officer responsible for procurement" or by a Contracting Officer.

§ 402.303 *Determinations and findings by the head of a procuring activity signing as "a chief officer responsible for procurement."* The following determinations, and written findings in support thereof, may be made by the head of a procuring activity signing as "a chief officer responsible for procurement":

(a) The determination required by § 402.211 with respect to any negotiated contract for experimental, developmental, or research work, or for the manufacture or furnishing of supplies for experimentation, development, research, or test: *Provided*, That such contract does not obligate the Government to pay more than \$25,000; and

(b) The determinations required by §§ 402.404, 402.405, and 402.406 with respect to the use of a cost or a cost-plus-a-fixed-fee contract or an incentive-type contract.

§ 402.304 *Determinations and findings by a contracting officer* To the extent that the authority has been or may be granted by procedures prescribed by each respective Department, the determinations required by §§ 402.404, 402.405, and 402.406 with respect to the use of a cost or a cost-plus-a-fixed-fee contract or an incentive-type contract may be made by a Contracting Officer: *Provided*, That any such determination shall be based upon written findings made by the Contracting Officer.

§ 402.305 *Forms of determinations and findings.* Each determination and findings—whether for (a) "Authority to Negotiate an Individual Contract," or (b) "Authority to Negotiate a Class of Contracts," or (c) "Advance Payments," or (d) "Method of Contracting," or (e) any other purpose—shall be prepared in accordance with procedures prescribed by each respective Department.

§ 402.306 *Procedure with respect to determinations and findings.* Each determination and findings shall be approved and processed in accordance with procedures prescribed by each respective Department.

§ 402.307 *Distribution of copies of determinations and findings.* Copies of each determination and findings shall be distributed in accordance with procedures prescribed by each respective Department: *Provided*, That one copy thereof with respect to (a) negotiated contracts (whether by individual contract or by class of contracts) (b) advance payments, and (c) the use of a cost or a cost-plus-a-fixed-fee contract or an incentive-type contract, shall be sent to the General Accounting Office with the copy of the contract negotiated and executed thereunder.

§ 402.308 *Retention of copies of determinations and findings, and of other records.* Executed originals of all determinations and findings, and copies of all supporting documents, shall be preserved in the cognizant procuring activity or in the Department concerned for six years following the date of each respective determination. Complete records with respect to all negotiated contracts shall be

preserved in the cognizant procuring activity or in the Department concerned for a period of six years following final payment on each such respective contract.

SUBPART D—TYPES OF CONTRACTS

§ 402.400 *Scope of subpart.* This subpart (a) describes approved types of contracts authorized for procurement by negotiation, and (b) imposes conditions on the use of each type.

§ 402.401 *Authorized types of contracts.* Pursuant to the authority of section 4 of the act, contracts negotiated under this part may be of any type which will promote the best interests of the Government, except that under no circumstances shall the cost-plus-a-percentage-of-cost system of contracting be used, or allowed to be used for any sub-contract under a Department contract. In accordance with the basic policy set forth in § 400.304 of this subchapter, the fixed-price type of contract shall be used for negotiated contracts unless conditions necessitate the use of some other type of contract; however, the cost or cost-plus-a-fixed-fee type of contract or the incentive-type of contract shall not be used except upon compliance with all of the applicable requirements of this subpart.

§ 402.402 *Fixed-price contract.* The fixed-price type of contract generally provides for a firm price or prices for the supplies or services which are being procured. This type of contract is used when costs can be estimated with reasonable accuracy and a fair price negotiated. It may include provision for price escalation or adjustment.

§ 402.403 *Fixed-price contract with provision for redetermination of price.* This type of contract is a fixed-price contract with a special provision for redetermining upward or downward the price or prices in the contract. It is used to obtain reasonable prices whenever contingency charges otherwise would be included in a contract price due to such factors as prolonged delivery schedules, unstable market conditions for material or labor, or uncertainty as to cost to performance. By this type of contract, the Government assumes the risk of certain contingencies which a contractor would otherwise assume and would include in his contract price, and the contract price is ultimately redetermined only to the extent that such contingencies actually occur. This type of contract is also used to assure to the Government the benefits of reduced costs of performance. When a fixed-price contract contains a redetermination provision of the incentive-type, it shall be deemed to be an incentive-type contract within the meaning of § 402.404.

§ 402.404 *Incentive-type contract.* The incentive-type contract may be of either a fixed-price or a cost-plus-a-fixed-fee nature, with a special provision for redetermination of the fixed price or fixed fee. It provides for a tentative base price or target price (called the "contract price") and a maximum price or maximum fee, with price or fee redetermination after completion of the contract for

the purpose of establishing a final price or fee based on the contractor's actual costs plus a sliding scale of profit or fee which varies inversely with the cost but which in no event shall permit the final price or fee to exceed the maximum price or fee stated in the contract. Use of the incentive-type contract is usually restricted to instances when the procurement of supplies or services involves a reasonably long production run, when the contractor has an acceptable accounting system and adequate manufacturing experience, and when a reasonably close "contract price" can be negotiated.

§ 402.404-1 *Limitation on use of incentive-type contract.* The incentive-type contract shall be used only after a determination, in accordance with the requirements of Subpart C of this part, that:

(a) Such method of contracting is likely to be less costly than other methods, or

(b) It is impractical to secure supplies or services of the kind or quality required without the use of such type of contract.

§ 402.405 *Cost contract.* The cost (or cost-sharing) type of contract provides for payment to the contractor of allowable costs, to the extent prescribed in the contract, incurred in the performance of the contract. This type of contract establishes an estimate of the total cost for purposes of (a) obligating current funds and (b) establishing a ceiling beyond which the contractor cannot go (except at his own expense) without prior approval of the Contracting Officer. It may provide for a predetermined fixed (or provisional) overhead rate, usually to be redetermined at stated intervals.

§ 402.405-1 *Limitation on use of cost contract.* The cost type of contract shall be used only after a determination, in accordance with the requirements of Subpart C of this part, that:

(a) Such method of contracting is likely to be less costly than other methods, or

(b) It is impractical to secure supplies or services of the kind or quality required without the use of such type of contract.

§ 402.406 *Cost-plus-a-fixed-fee contract.* The cost-plus-a-fixed-fee type of contract is similar to the cost contract in that it provides for payment to the contractor of all allowable costs as defined in the contract and establishes an estimate of the total cost. It differs from the cost contract in that it also provides for payment of a fixed fee based on the estimated cost of the contract. This fixed fee shall not vary with actual cost (except in the case of an incentive-type contract), but only with a change in the estimated cost as a result of a change in the scope of work under the contract. This type of contract may provide for a predetermined fixed (or provisional) overhead rate, usually to be redetermined at stated intervals.

§ 402.406-1 *Limitation on use of cost-plus-a-fixed-fee contract.* The cost-plus-a-fixed-fee type of contract shall be used only after a determination, in ac-

cordance with the requirements of Subpart C of this part, that:

(a) Such method of contracting is likely to be less costly than other methods, or

(b) It is impractical to secure supplies or services of the kind or quality required without the use of such type of contract.

§ 402.406-2 *Limitations on fixed fee.* The fixed fee shall be negotiated by the parties, but shall not exceed (except to the extent approved by the Secretary of the Department concerned within the limits imposed by section 4 (b) of the act) seven per centum (7%) of the estimated cost of the contract, exclusive of fee: *Provided*, That a fee not in excess of ten per centum (10%) of such estimated cost is authorized in the case of any contract for experimental, developmental, or research work. In a cost-plus-a-fixed-fee contract for architectural or engineering services relating to any public work or utility project, there is authorized for such services a fixed fee which, together with the costs of such services, shall not exceed six per centum (6%) of the estimated cost of such project (exclusive of the fixed fee for the project).

§ 402.407 *Time and materials contract.* The time and materials type of contract provides for the purchase of supplies or services on the basis of (a) direct labor hours at specified hourly rates (which rates include direct labor, overhead, and profit) and (b) material at cost. This type of contract shall not be used if any other type of contract is equally advantageous to the Government. Representative situations where this type of contract might be used are contracts for engineering and design services in connection with the production of supplies, contracts for repair, maintenance, or overhaul, and contracts for the production of supplies in special cases of emergency.

§ 402.408 *Letter contract or letter of intent.* A letter contract or letter of intent is a preliminary contract with a tentative price or specific amount agreed to therein, and with such other basic terms set forth therein as can be agreed to at that time. It authorizes the contractor to commence work, incur costs, and make commitments pending negotiation and execution of the final definitive contract. It obligates the Government either to make a final definitive contract within a specified time or to reimburse the contractor for costs incurred under the letter contract or letter of intent. This type of contract shall be used, subject to such approval as is required by the procedures of each respective Department, only when one of the following conditions exists:

(a) When it is essential to give to the contractor a binding commitment in order to permit him to commence work immediately or

(b) When the nature of the work involved prevents the preparation of definitive requirements or specifications, thereby making it impossible to negotiate a final contract at that time.

The letter contract or letter of intent shall be superseded as soon as possible by a final definitive contract.

§ 402.409 *Other types of contracts.* In addition to the types of contracts described in the preceding sections, contracts may be of any type or nature referred to in the definition of "contracts" in § 400.201-6 of this subchapter, and also may be of the call type, open-end type, or indefinite quantity type.

§ 402.410 *Books and records of cost-type contractors.* Pursuant to the authority of section 4 (b) of the act, any procuring activity, through any authorized representative thereof, shall have the right to inspect the plants and to audit the books of any prime contractor or subcontractor engaged in the performance of a cost or a cost-plus-a-fixed-fee contract. This authority is in addition to any other right of inspection or audit conferred by statute.

§ 402.411 *Contract forms and provisions.* The forms and provisions of contracts shall conform to the requirements of law, of this subchapter, and of procedures prescribed by each respective Department. However, all cost and cost-plus-a-fixed-fee contracts shall provide for advance notification by the contractor to the procuring activity, or to the Department concerned, of any subcontract thereunder on a cost-plus-a-fixed-fee basis and of any fixed-price subcontract or purchase order which exceeds in dollar amount either \$25,000 or five per centum (5%) of the total estimated cost of the prime contract.

SUBPART E—ADVANCE PAYMENTS

§ 402.500 *Scope of subpart.* This subpart sets forth (a) the nature of advance payments, (b) the authority for making advance payments, and (c) the limitations on such authority.

§ 402.501 *Nature of advance payments.* Advance payments shall be deemed to be payments made by the Government to a contractor in the form of loans or advances prior to and in anticipation of complete performance under a contract. Advance payments are to be distinguished from "partial payments" and "progress payments" and other payments made because of performance or part performance of a contract.

§ 402.502 *Authority to make advance payments.* Pursuant to the authority of section 5 of the act, advance payments may be made under negotiated contracts executed before or after the effective date of this subchapter in any amount not exceeding the contract price and upon such terms as the parties shall agree: *Provided*:

(a) Adequate security for such advance payments is obtained;

(b) Provision for advance payments is in the public interest or in the interest of national defense, as determined by the Secretary of a Department in accordance with the requirements of Subpart C of this part; and

(c) Provision for advance payments is necessary and appropriate in order to procure the required supplies or services, as determined by the Secretary of a Department in accordance with the requirements of Subpart C of this part.

§ 402.503 *Limitations on authority to make advance payments.* Advance payments shall not be authorized unless all of the following requirements are satisfied:

(a) No other contractor is available to furnish the desired supplies or services, upon terms satisfactory to the Department, without provision for advance payments;

(b) Except for non-profit research and development contracts with educational institutions, no other means of adequate financing is available to the contractor;

(c) The amount of the authorization is predicated upon use of the contractor's own working capital to the extent possible.

§ 402.504 *Security provisions.* The advance payment agreement should provide for deposit of all payments into special bank accounts and should include suitable covenants to protect the Government's interest. Advance payments under such authorizations should be limited to the contractor's financial needs, and withdrawals from the special bank accounts provided therefor should be closely supervised. The terms governing advance payments may include as security, in addition to or in lieu of the requirements for an advance payment bond, provision for a lien in favor of the Government, paramount to all other liens, upon the supplies contracted for, upon the credit balance in any special account in which such payments may be deposited, and upon such of the material and other property acquired for performance of the contract as the parties shall agree.

§ 402.505 *Interest on advance payments.* Whenever an advance payment is made to a contractor, interest will be charged (usually at the rate of 2½ percent per annum on the unliquidated balance) except that advance payments may be made without interest in either of the following situations:

(a) Advance payments authorized in connection with contracts which provide for performance at cost, or without profit or fee to the contractor; or

(b) Advance payments to be made without interest as authorized by the Secretary of a Department.

PART 403—COORDINATED PROCUREMENT

Sec.	
403.000	Scope of part.
403.001	Coordinated procurement of items in short supply.

SUBPART A—SINGLE DEPARTMENT PROCUREMENT

403.100	Scope of subpart.
403.101	Definitions.
403.102	Execution and administration of contracts.
403.103	Specifications.
403.104	Funds and payments.
403.105	Inspection.
403.106	Transportation of materials.
403.107	Transfer of uncompleted contracts.
403.107-1	Effect of assignment of procurement responsibility.
403.107-2	Disputes under transferred contracts.
403.107-3	Contracting officers under transferred contracts.
403.108	Administrative costs.

Sec.
403.109 Preparation of procurement requests.

SUBPART B—ARMED SERVICES PETROLEUM PURCHASING AGENCY

403.200 Scope of subpart.
403.201 Procurement responsibility of Petroleum Purchasing Agency.
403.202 Organization of agency.
403.203 Functions.
403.204 Notification to departments.
403.205 Applicability of regulation and department procedures.

SUBPART C—ARMED SERVICES MEDICAL PROCUREMENT AGENCY

403.300 Scope of subpart.
403.301 Procurement responsibility of Medical Procurement Agency.
403.302 Organization of agency.
403.303 Functions.
403.304 Notification to departments.
403.305 Applicability of regulation and department procedures.

AUTHORITY: §§ 403.000 to 403.305 issued under sec. 1 (a), (b), 54 Stat. 712, 55 Stat. 838, Pub. Law 413, 80th Cong.; 41 U. S. C. preceding sec. 1 note, 50 U. S. C. App. 601-622; E. O. 9001, Dec. 27, 1941, 3 CFR Cum. Supp.

§ 403.000 *Scope of part.* This part sets forth, on the basis of the provisions of and authority contained in section 10 of the act, and in accordance with the provisions of the National Security Act of 1947 (Public Law 253, 80th Congress), the basic policies and requirements relating to the coordinated procurement of supplies and services. The different types of coordinated procurement are the following:

(a) "Single Department procurement," whereby one Department purchases certain supplies or services for another Department;

(b) "Joint procurement," whereby a jointly staffed and financed procuring activity purchases certain supplies or services for the three Departments; and

(c) "Collaborative procurement," whereby procuring activities of more than one Department occupy offices in the same area but make separate contracts, the objective being to center in one place geographically all procurement of similar supplies or services.

§ 403.001 *Coordinated procurement of items in short supply.* Whenever there exists a shortage in supplies or services, the matter shall be referred by the head of a procuring activity to the appropriate authority within his Department, whereupon the latter shall immediately confer with the corresponding authority in each of the other Departments in an effort to solve the problem.

SUBPART A—SINGLE DEPARTMENT PROCUREMENT

§ 403.100 *Scope of subpart.* This subpart deals with the procurement of supplies or services by one Department for another Department pursuant to either (a) agreement between the Departments concerned, or (b) assignment of procurement responsibility by the Munitions Board. However, the provisions of Subpart D of Part 855 shall govern (1) the transfer of supplies from the stocks of one Department to another Department, and (2) work performed by one Department for another Department.

§ 403.101 *Definitions.* As used in this subpart, "Requiring Department" is the Department originating a requisition or procurement request for supplies or services to be purchased by another Department; and "Purchasing Department" is the department which is assigned the purchase responsibility for certain supplies and services, and which makes contracts for such supplies and services to satisfy its own requirements and the requirements of another Department.

§ 403.102 *Execution and administration of contracts.* Purchases for each department will generally be covered by separate contracts. However, when economy or more efficient procurement would result, the Purchasing Department may combine in a single contract the requirements of all the departments, with the quantities of each item for each Department being shown separately and being clearly identified as to the proper appropriation or fund to be charged. The procurement of the supplies or services and the preparation, execution, and administration of contracts shall be in accordance with the provisions of this regulation and with procedures prescribed by the Purchasing Department. Distribution of documents shall be made by the Purchasing Department as specified by the Requiring Department. Contracts will be numbered in the regular contract number series of the procuring activity of the Purchasing Department. The Purchasing Department will allocate among the Departments on an equitable basis the supplies and services purchased, taking into consideration prices, quantities available, and delivery schedules.

§ 403.103 *Specifications.* The Purchasing Department shall have the following responsibilities in connection with specifications:

(a) Obtaining from the Requiring Department a list of (or copies of) specifications used in the assigned field;

(b) Reviewing the specifications to determine those which are of such interest that joint or Federal specifications should be prepared;

(c) Taking action to have initiated joint or Federal specifications projects.

§ 403.104 *Funds and payments.* Each requisition or procurement request forwarded by the Requiring Department to the Purchasing Department will show the appropriation or fund of the Requiring Department under which the contract is to be drawn. The signature of the officer approving the requisition or procurement request for the Requiring Department will be considered as establishing conclusively that the purchase is authorized under the appropriation or fund cited and that the amount stated has been committed for the purpose of meeting payments on the contract, as and when accruing. The amount shown in the requisition or procurement request will be the Requiring Department's best estimate of the cost of the supplies and services to be purchased. The Purchasing Department is authorized, without further approval of the Requiring Department, to make a contract for a total sum, including all contingent amounts for variation in quantity and price, not in excess of the amount estimated by the

Requiring Department plus 10 percent, unless otherwise specified in the requisition or procurement request. The Purchasing Department will make no amendment increasing the total dollar amount of a contract without prior approval of the Requiring Department; *Provided, however* That such prior approval shall not be required for amendments establishing the amount of adjustments required by the terms of the contract as executed or previously amended. In every instance, the contract will establish an obligation and provide for payment under an appropriation or fund of the Requiring Department; *Provided, That* this requirement is not to be construed as changing the established concept of obligation of funds. Each Department will provide the other Departments with a list of its disbursing offices and with the requirements governing the submission of invoices and the designation of paying offices. The Purchasing Department will comply with such requirements of the Requiring Department by including in the contract appropriate invoicing and payment instructions. The Requiring Department will include on the requisition or procurement request appropriate accounting data ordinarily shown in contracts of the Requiring Department, and such data will be included in the contract issued by the Purchasing Department.

§ 403.105 *Inspection.* Inspection of supplies at place of manufacture or prior to shipment will generally be made by inspectors of the Purchasing Department. However, this general rule shall not be construed to preclude the utilization of the inspectors of the Requiring Department when they are located at or otherwise servicing the contractor's plant. Inspection at destination will generally be made by inspectors of the Requiring Department.

§ 403.106 *Transportation of materials.* Every requisition or procurement request will show the appropriation or fund and accounting classification chargeable for such transportation costs as may be incurred in effecting delivery at Government expense. Government bills of lading will generally be issued by the Purchasing Department. In every instance, the Government bill of lading will show (a) the Requiring Department as the department to be billed, and (b) the appropriation or fund designated by that Department as the appropriation chargeable. Where Government bills of lading of the Purchasing Department are used to cover shipment of supplies consigned to the Requiring Department, the bill of lading number will be prefixed by the name of the Requiring Department.

§ 403.107 *Transfer of uncompleted contracts.*

§ 403.107-1 *Effect of assignment of procurement responsibility.* As a general rule, when the procurement responsibility for a commodity or class of commodities is assigned to one Department, uncompleted contracts of any other Department for any such commodity or class of commodities will not be transferred, but will continue to be administered for all purposes by such other Department.

§ 403.107-2 *Disputes under transferred contracts.* In the case of any contract transferred, or to be transferred, to the Department of the Navy, the contract should be amended to provide that the Navy Department Board of Contract Appeals hear and decide all disputes concerning questions of fact which are appealed pursuant to the "Disputes" clause of such transferred contract. In the case of any contract transferred, or to be transferred, to the Department of the Army or the Department of the Air Force, the contract should be amended to provide that the Army Board of Contract Appeals hear and decide all disputes concerning questions of fact which are appealed pursuant to the "Disputes" clause of such transferred contract.

§ 403.107-3 *Contracting officers under transferred contracts.* In the case of any contract transferred, or to be transferred, to any department, the successor to the Contracting Officer for each such contract shall be the head of the procuring activity (or any Contracting Officer thereof) to which the administration of any such contract is assigned, and any such successor shall have all of the rights and responsibilities of a Contracting Officer under such transferred contract.

§ 403.108 *Administration costs.* The Purchasing Department will bear, without reimbursement therefor, (a) the administrative costs incidental to its procurement of supplies and services for another Department, and (b) the cost of such inspection as it may perform in connection therewith. However, when a procurement responsibility is transferred from one Department to another Department, funds appropriated or to be appropriated for defraying the administrative costs of such procurement responsibility shall be made available to the Purchasing Department by transfer or otherwise as appropriate and desired by the Purchasing Department; but the Department to which the procurement responsibility is transferred will assume budget cognizance at the earliest possible date.

§ 403.109 *Preparation of procurement requests.* Requisitions or procurement requests for supplies or services to be purchased by another department should contain substantially the following information and any other information required by procedures prescribed by the Requiring Department or by the Purchasing Department:

(a) Description (including all identifying data) quantity, and estimated price of supplies or services to be purchased;

(b) Any permitted variation in the amount which the Purchasing Department is authorized to obligate, as referred to in § 403.104;

(c) Time, place, and method of delivery;

(d) Place, method, and conditions of inspection (whether by inspectors of Purchasing Department or Requiring Department or both);

(e) Shipping, packaging, packing, and marking instructions;

(f) Requisition (or other purchase authority), appropriation, allotment,

and accounting data with respect to purchase price and transportation costs;

(g) Invoice and payment instructions;

(h) Contract identification, and instructions as to special provisions to be included in the contract;

(i) Distribution of copies of resulting contracts and shipping documents or receiving reports;

(j) Certification of funds by a fiscal office or division.

SUBPART B—ARMED SERVICES PETROLEUM PURCHASING AGENCY

§ 403.200 *Scope of subpart.* This subpart deals with joint procurement by the Armed Services Petroleum Purchasing Agency, and prescribes general policies governing the operation of that Agency.

§ 403.201 *Procurement responsibility of Petroleum Purchasing Agency.* The Armed Services Petroleum Purchasing Agency (referred to in this subpart as the "ASPPA") is established as a joint agency of the Departments of the Army, Navy, and Air Force pursuant to the authority of section 10 of the act. In accordance with planning and coordinating directives of the Armed Services Petroleum Board, the ASPPA shall be responsible for all procurement of petroleum and petroleum products (referred to in this subpart as "petroleum items") and such other supplies and services as may be assigned to it from time to time.

§ 403.202 *Organization of Agency.* The functions of the ASPPA shall be supervised by The Quartermaster General of the Army, the Chief of the Bureau of Supplies and Accounts of the Navy, and the Director of Maintenance, Supply, and Services of the Air Force, each of whom shall serve successively as Chairman for a two-year term. An executive officer shall be selected in rotation from the three Departments to serve for a term of two years; he shall conduct the business of the ASPPA as "head of a procuring activity," and shall perform such other services as may be assigned.

§ 403.203 *Functions.* In carrying out its responsibility for the procurement of petroleum items, the ASPPA, within the limits of allotments of appropriations made available for such purpose by each of the Departments, and in accordance with requirements established by the Departments and priorities established for each Department by the Armed Services Petroleum Board under the guidance of the Joint Chiefs of Staff, shall perform the following functions:

(a) Consolidate the established requirements of the three Departments;

(b) Procure petroleum items by means of formal advertising or negotiation, in accordance with the requirements of Parts 401 and 402 respectively;

(c) Supervise the administration and performance of contracts, and for this purpose shall arrange for inspections and audits, utilizing such facilities and services of the Departments as may be made available therefor;

(d) Consolidate transportation requirements and arrange for delivery to storage or to installations through the

appropriate office of the Department involved in transportation, but without having any responsibility for operational control of transportation facilities; and

(e) Coordinate joint bulk storage by the three Departments.

§ 403.204 *Notification to Departments.* The ASPPA shall advise the three Departments with reference to the scheduling of their petroleum items requirements, and shall render such information, reports and recommendations as may be requested or desirable to interested agencies in the National Military Establishment in connection with matters arising in the course of procurement of petroleum items, such as short supply, changes in specifications, practices, improvements in storage, distribution and transportation facilities, and imbalances between purchases, transportation, and storage.

§ 403.205 *Applicability of regulation and Department procedures.* All procurement by the ASPPA shall be effected in accordance with the requirements of this regulation and the procedures prescribed by that Department selected from time to time by the Armed Services Petroleum Board. For such purposes in general, and in particular for purposes of (a) determinations and findings, (b) contract clearance, (c) deviations, (d) reports, and (e) contract appeals, the ASPPA shall be considered a procuring activity of the selected Department. As such a procuring activity, the ASPPA shall have the same independence of operation as the technical services of the Army, the Bureaus of the Navy, or the Air Materiel Command of the Air Force, depending on the Department under which the ASPPA is operating, and shall have all the powers and privileges with respect to contract forms and other matters as are accorded to a procuring activity by the Armed Services Procurement Regulation and the procedures prescribed by that Department under which the ASPPA is operating.

SUBPART C—ARMED SERVICES MEDICAL PROCUREMENT AGENCY

§ 403.300 *Scope of subpart.* This subpart deals with joint procurement by the Armed Services Medical Procurement Agency and prescribes general policies governing the operation of that Agency.

§ 403.301 *Procurement responsibility of Medical Procurement Agency.* The Armed Services Medical Procurement Agency (referred to in this subpart as the "ASMPA") is established as a joint agency of the Departments of the Army, Navy, and Air Force pursuant to the authority of section 10 of the act. In accordance with directives of the Armed Services Medical Procurement Board, the ASMPA shall be responsible for central procurement of medicines and medical, surgical, hospital, dental, and veterinary supplies (referred to in this part as "medical items") and such other supplies and services as may be assigned to it from time to time.

§ 403.302 *Organization of Agency.* The functions of the ASMPA shall be

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directed by a Commanding Officer, who shall be nominated from one of the three Departments by the Armed Services Medical Procurement Board, and appointed by the Surgeons General of the Army and the Navy, and the Air Surgeon of the Air Force. There shall also be a Deputy Commander, similarly nominated and appointed, but of a Department other than that of the Commanding Officer. The Commanding Officer shall conduct the business of the ASMPA as "head of a procuring activity," and shall perform such other services as may be assigned.

§ 403.303 *Functions.* In carrying out its responsibility for the central procurement of medical items, the ASMPA, within the limits of allotments of appropriations made available for such purpose by each of the departments, and in accordance with requirements established by the departments and the Armed Services Medical Procurement Board under the guidance of the Surgeons General of the Army and the Navy, and the Air Surgeon of the Air Force, shall perform the following functions:

(a) Procure medical items (in accordance with the consolidated requirements of the three departments) by means of formal advertising or negotiation, in accordance with the requirements of Parts 852 and 853 respectively.

(b) Supervise the administration and performance of contracts, and for this purpose shall arrange for inspections and audits, utilizing such facilities and services of the Departments as may be made available therefor; and

(c) Consolidate transportation requirements and arrange for delivery to storage or to installations through the appropriate office of the Department involved in transportation but without having any responsibility for operational control of transportation facilities.

In addition to its procurement responsibility, the ASMPA shall perform such other functions as may be assigned to it by competent authority.

§ 403.304 *Notification to Departments.* The ASMPA shall advise the three Departments with reference to the scheduling of their medical items requirements, and shall render such information, reports and recommendations as may be requested or desirable to interested agencies in the National Military Establishment in connection with matters arising in the course of procurement of medical items, such as short supply, changes in specifications, and practices.

§ 403.305 *Applicability of regulation and Department procedures.* All procurement by the ASMPA shall be effected in accordance with the requirements of this regulation and the procedures prescribed by the Department of the Army. However, the ASMPA is a joint agency of the Departments of the Army, Navy, and Air Force for the central procurement of medical items, notwithstanding the fact that, for the purposes of this regulation and procedures thereunder, the ASMPA shall be considered a procuring activity of the Department of the Army.

PART 404—INTERDEPARTMENTAL PROCUREMENT

Sec.

404.000 Scope of part.

SUBPART A—PROCUREMENT FROM OR UNDER CONTRACTS OF BUREAU OF FEDERAL SUPPLY

404.101 Statement of policy.

404.102 Orders under contracts of Bureau of Federal Supply.

404.103 Procurement from supply centers of Bureau of Federal Supply.

404.104 Use of stock catalog, Bureau of Federal Supply, Washington, D. C.

SUBPART B—PROCUREMENT OF PRINTING AND RELATED SUPPLIES

404.201 Printing and related supplies.

SUBPART C—PROCUREMENT OF PRISON-MADE AND BLIND-MADE PRODUCTS

404.301 Prison-made products.

404.302 Blind-made products.

SUBPART D—PROCUREMENTS UNDER THE ECONOMY ACT FROM OR THROUGH ANOTHER FEDERAL AGENCY

404.400 Scope of subpart.

404.401 Authorization and policy relating to placing and filling orders.

404.402 Determination of amount and method of payment.

AUTHORITY: §§ 404.000 to 404.402 issued under sec. 1 (a), (b), 54 Stat. 712, 55 Stat. 838, Pub. Law 413, 80th Cong.; 41 U. S. C. preceding sec. 1 note, 50 U. S. C. App. 601-622; E. O. 9001, Dec. 27, 1941, 3 CFR Cum. Supp.

§ 404.000 *Scope of part.* This part deals with the procurement of supplies and services by any Government department or agency from or through any other Government department or agency.

SUBPART A—PROCUREMENT FROM OR UNDER CONTRACTS OF BUREAU OF FEDERAL SUPPLY

§ 404.101 *Statement of policy.* In the procurement of supplies or services which are covered by contracts made by the Bureau of Federal Supply, Treasury Department, it shall be the policy of each Department, in accordance with requirements and procedures prescribed by it, to utilize to the fullest extent practicable the "Federal Supply Schedule" of such Bureau.

§ 404.102 *Orders under contracts of Bureau of Federal Supply.* Orders issued under contracts of the Bureau of Federal Supply shall contain sufficient data to enable prompt identification of the correct listing in the proper Federal Supply Schedule.

§ 404.103 *Procurement from supply centers of Bureau of Federal Supply.* Each Department is authorized, in accordance with procedures prescribed by it, to procure from supply centers established by the Bureau of Federal Supply in major cities throughout the United States any supplies or services available from any such supply center. Stock catalogs issued by each supply center list items which are regularly available for issue and contain instructions relative to the use of the catalogs as well as the submission of delivery orders to the supply center.

§ 404.104 *Use of Stock Catalog, Bureau of Federal Supply, Washington, D. C.* It

shall be the policy of each Department to avoid, to the extent practicable, placing orders under the Stock Catalog of the Bureau of Federal Supply for items stocked in its Washington warehouse when shipment is to be made outside the District of Columbia or adjacent counties of Maryland and Virginia.

SUBPART B—PROCUREMENT OF PRINTING AND RELATED SUPPLIES

§ 404.201 *Printing and related supplies.* Printing, binding, and blankbook work, and envelopes, paper, and related supplies, shall be procured in accordance with (a) regulations of the Congressional Joint Committee on Printing, and (b) procedures prescribed by each respective Department.

SUBPART C—PROCUREMENT OF PRISON-MADE AND BLIND-MADE PRODUCTS

§ 404.301 *Prison-made products.* Procurement of supplies manufactured by Federal penitentiaries shall be made to the extent that such supplies are available, and not in excess of current market prices. General clearances have been granted each Department to procure from commercial sources certain supplies listed in the Schedule of Products issued by Federal Prison Industries, Inc. A special clearance must be obtained from Federal Prison Industries, Inc., c/o the Department of Justice, for the procurement from commercial sources of any supplies listed on such schedule and not covered by a general clearance.

§ 404.302 *Blind-made products.* Supplies listed in the Schedule of Blind-Made Products issued by the Bureau of Federal Supply, Treasury Department, shall be procured from non-profit-making agencies for the blind at the prices determined by the Committee on Purchases of Blind-Made Products. The Bureau of Federal Supply may grant a special clearance to procure from commercial sources supplies listed in the Schedule of Blind-Made Products (a) when necessary to meet emergency requirements, or (b) when no agency for the blind is in a position to furnish the required supplies. In addition, procurement of any such listed supplies from commercial sources is authorized without obtaining a special clearance in the case of (1) military necessity requiring delivery within two weeks, (2) procurement of a single unit as listed on such Schedule, or (3) supplies to be used outside the continental United States. Where supplies manufactured by non-profit-making agencies for the blind are similar to those manufactured in Federal penitentiaries, priority of procurement shall be given to the Federal Prison Industries, Inc.

SUBPART D—PROCUREMENT UNDER THE ECONOMY ACT FROM OR THROUGH ANOTHER FEDERAL AGENCY

§ 404.400 *Scope of subpart.* This subpart deals with orders for supplies or services placed with another Government department or agency pursuant to the authority of the Economy Act of June 30, 1932, as amended (31 U. S. Code 680), except that it does not apply to any procurement covered by subparts A, B, or C

of this part. Orders for supplies and services placed within a Department shall be in accordance with procedures prescribed by that Department.

§ 404.401 *Authorization and policy relating to placing and filling orders.* Each procuring activity, when it is in the interest of the Government to do so, may place orders with any other Government department or agency for supplies or services that any such requisitioned department or agency may be in a position to furnish or perform or to obtain by contract. Generally, an order for supplies or services will not be placed with a department or agency which is not in a position to furnish the supplies or is not equipped to perform the services, except that an order may be filled by means of outside contract with a commercial source of supply if the order is placed by any one of the following Government departments or agencies: Department of the Army, Department of the Navy, Department of the Air Force, Department of the Treasury, Civil Aeronautics Administration, and Maritime Commission. An order for services shall not be placed with a department or agency when such services can be performed as conveniently or more cheaply by private contractors.

§ 404.402 *Determination of amount and method of payment.* Upon the written request of the requisitioned department or agency, an advance by check shall be made of all or part of the estimated cost of furnishing the supplies or services as specified by such requisitioned department or agency. *Provided,* That, where an advance is made, proper adjustments of the basis of the actual cost of the supplies or services shall be made as may be agreed upon by the departments or agencies concerned. Subject to approval by the requisitioned department or agency, payment by check may be made after the furnishing of the supplies or services. The amount to be paid shall be based on the actual cost of the supplies or services as may be agreed upon by the departments or agencies concerned.

PART 405—FOREIGN PURCHASES

Sec.
405.000 Scope of part.

SUBPART A—BUY AMERICAN ACT AND OTHER STATUTORY PROHIBITIONS ON FOREIGN PURCHASES

405.101 Statutory prohibitions.
405.102 Prohibitions of Buy American Act.
405.103 Applicability of Buy American Act.
405.103-1 Kinds of supplies.
405.103-2 Origin of supplies used in manufactured supplies.
405.103-3 Geographical application.
405.103-4 Nonavailability of supplies or materials.
405.104 Authority to grant exceptions to Buy American Act.
405.105 Supplies excepted from Buy American Act.
405.105-1 Exceptions based on unreasonable cost.
405.106 Other statutory prohibitions on foreign purchases.
405.106-1 Prohibitions of Military Appropriation Acts.
405.107 References in contractual documents.

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405.103 Violations of Buy American Act
Provision in construction contracts.
405.109 Armed Services list of supplies excepted from Buy American Act.
405.109-1 Supplies to be procured for public use.
405.109-2 Supplies to be used in the construction, alteration, or repair of any public building or public work.

SUBPART D—CANADIAN PURCHASES

405.201 Purchases from Canadian suppliers.
405.202 Guarantee by Canadian Government.

SUBPART C—DUTY AND CUSTOMS

405.301 Purchases of war material abroad.
405.301-1 Entry certificate.
405.302 Nature of war material.
405.303 Nature of emergency purchases.
405.304 Customs duties and drawbacks.

AUTHORITY: §§ 405.000 to 405.304 issued under sec. 1 (a), (b), 54 Stat. 712, 55 Stat. 838, Pub. Law 413, 80th Cong.; 41 U. S. C. preceding sec. 1 note, 50 U. S. C. App. C01-622; E. O. 9001, Dec. 27, 1947, 3 CFR Cum Supp.

§ 405.000 *Scope of part.* This part deals with (a) statutory prohibitions on foreign purchases, (b) purchases from Canadian sources, and (c) duty and customs.

SUBPART A—BUY AMERICAN ACT AND OTHER STATUTORY PROHIBITIONS ON FOREIGN PURCHASES

§ 405.101 *Statutory prohibitions.* Each Department, in connection with the procurement of supplies and in connection with construction work, shall comply with the provisions of the Buy American Act (Act of March 3, 1933; 41 U. S. Code 10a-c) and with such other prohibitions on foreign purchases as may be contained in annual Appropriation Acts or in Acts authorizing appropriations.

§ 405.102 *Prohibitions of Buy American Act.* The Buy American Act prohibits, within terms of its applicability and subject to the authority to grant certain exceptions (set forth in §§ 405.103 and 405.104 respectively) the procurement by any Department, and the use in connection with the performance of any Department contract for the construction, alteration, or repair of any public building or public work, of (a) unmanufactured supplies unless mined or produced in the United States, and (b) manufactured supplies unless manufactured in the United States substantially all from supplies mined, produced, or manufactured in the United States.

§ 405.103 *Applicability of Buy American Act.*

§ 405.103-1 *Kinds of supplies.* The Buy American Act applies to raw materials and manufactured products. However, in the case of manufactured products, the Buy American Act applies to the end product itself and to the components directly furnished for that end product, but does not apply to supplies that are used in the manufacture of any such component; for example, in the procurement of clothing, the law would apply to the clothing itself and to the cloth

used in the manufacture of such clothing, but would not apply to the yarn used in the manufacture of the cloth. It has been expressly held by the Comptroller General that the Buy American Act does not apply to the procurement of books, periodicals, magazines, newspapers, or the printing of briefs.

§ 405.103-2 *Origin of supplies used in manufactured supplies.* The prohibitions of the Buy American Act do not apply to supplies manufactured in the United States when such supplies are manufactured "substantially all" from supplies mined, produced, or manufactured in the United States. Supplies shall be considered to be manufactured "substantially all" from United States supplies whenever the cost of foreign supplies used in such manufacture constitutes 25 percent or less of the cost of all supplies used in such manufacture. In this connection, suppliers shall accompany their bids or quotations contemplating the furnishing or use of foreign supplies (not excepted pursuant to § 405.105) with a certificate substantially as follows:

Not to exceed _____ percent in cost of foreign materials, used in the manufacture of the supplies offered, is of foreign origin.

Any supplies of an unknown origin used in such manufacture shall be considered to be foreign supplies.

§ 405.103-3 *Geographical application.* The Buy American Act applies only to (a) supplies for use within the United States and (b) construction work on public buildings or public works within the United States. As used in the Buy American Act and in this section, the term "United States" includes the United States and any place subject to its jurisdiction.

§ 405.103-4 *Nonavailability of supplies or materials.* The Buy American Act does not apply to supplies, or to materials from which such supplies are manufactured, either of which are not mined, produced, or manufactured, as the case may be, in the United States in sufficient and reasonably available commercial quantities and of a satisfactory quality. This section shall be applied and used only in accordance with procedures prescribed by each respective Department.

§ 405.104 *Authority to Grant Exceptions to Buy American Act.* The Secretary of each Department is authorized by the Buy American Act to grant exceptions thereto when application of the Buy American Act:

- Would be inconsistent with the public interest, or
- Would unreasonably increase the cost, or
- In connection with construction or repair work, would be impracticable or would unreasonably increase the cost;

Provided, That, in the case of supplies to be used in construction or repair work, any exception granted under this section shall be noted in the specifications and a public record made of the supporting findings.

§ 405.105 *Supplies excepted from Buy American Act.* The Secretaries of the three Departments have administratively

determined, in accordance with the provisions of §§ 405.103-4 and 405.104 that the following supplies may be procured or used by any Department without regard to the country of origin:

- (a) The articles, materials, and supplies listed at the end of this subpart; and
- (b) Articles, materials, and supplies manufactured from any of such listed supplies.

§ 405.105-1 *Exceptions based on unreasonable cost.* It has also been administratively determined by the Secretaries of the three Departments, in accordance with the provisions of § 405.104, that the cost would be unreasonable, and that therefore the prohibitions of the Buy American Act would not apply, when the lowest net cost of United States supplies exceeds the lowest net cost of foreign supplies, including duty, by 25 percent or more (100 percent in the case of foreign supplies costing \$100 or less). However, in any case involving a differential of less than 25 percent, where the Contracting Officer, because of the amount involved, considers the differential to be unreasonable, he may submit the matter for consideration to the Secretary of the Department concerned; and shall in any case submit the matter for such consideration when the differential is more than \$5,000 but less than 25 percent.

§ 405.106 *Other statutory prohibitions on foreign purchases.*

§ 405.106-1 *Prohibitions of Military Appropriation Acts.* Annual appropriation acts for the Department of the Army customarily prohibit the use of Army funds for the procurement of any article of food or clothing not grown or produced in the United States, except (a) to the extent that the Secretary of the Army determines that any such articles cannot be procured in the United States of satisfactory quality and in sufficient quantities and at reasonable prices as and when needed (which determination has been made with respect to all articles of food and clothing contained in the list set forth at the end of this subpart) and (b) the purchase by vessels in foreign waters, or by establishments located outside the continental United States, Hawaii, and Alaska, for personnel attached thereto. The foregoing prohibition, so long as it appears in an appropriation act for the Department of the Army, is applicable to procurements obligating Army funds regardless of the Department or procuring activity effecting the obligation.

§ 405.107 *References in contractual documents.* Formal solicitations of bids and informal requests for quotations shall refer to the Buy American Act and any other statutory prohibitions on foreign purchases whenever applicable to the supplies being procured, and information as to excepted supplies shall be made available to suppliers upon request. All contracts for supplies shall contain, with respect to the Buy American Act and any other statutory prohibitions on foreign purchases, such provision as is required by this regulation and by procedures prescribed by each respective Department.

§ 405.108 *Violation of Buy American Act provision in construction contracts.* The Secretary of any Department, upon finding that in the performance of a construction contract there has been a failure to comply with the Buy American Act provision, shall make public his findings (including therein the name of the contractor obligated under such contract) and no other contract for the construction, alteration, or repair of any public building or public work in the United States or elsewhere shall be awarded to such contractor, subcontractors, materialmen, or suppliers with which such contractor is associated or affiliated, within a period of three years after such finding is made public. The name of any such noncomplying contractor or bidder shall be placed on each Department's list of ineligible contractors and disqualified bidders referred to in § 400.303 of this chapter.

§ 405.109 *Armed Services list of supplies excepted from Buy American Act.* In accordance with the provisions of §§ 405.103-4 and 405.104 of the Armed Services Procurement Regulation, the supplies listed below, together with supplies from which they are manufactured and supplies which are manufactured from them, are excepted from the application of the Buy American Act:

§ 405.109-1 *Supplies to be procured for public use.*

Agar.
Aluminum.
Anchovies.
Antimony.
Antipasto.
Argols, tartar and wine lees.
Asbestos.
Balsa.
Bananas.
Beryl.
Bismuth.
Brazil nuts.
Cadmium.
Calcium cyanamide.
Calcium nitrate.
Calcium tartrate.
Capers.
Castor oil.
Caviar.
Celestite.
Chalk, English.
Chocolate.
Chrome ore or chromite.
Cinchona bark.
Citron.
Clay, English ball or English china.
Cobalt (ore and metals).
Cocoa and cocoa fiber.
Cocoanut oil.
Cod roe.
Coffee.
Columbite.
Copper.
Copper nickel alloy, natural.
Copra.
Cork.
Corundum.
Crab meat.
Cryolite, natural.
Damar gum.
Derris and tumpo roots.
Diamonds, industrial and abrasive.
Emertine.
Ergot.
Ester gum.
Fiber, abaca and agave.
Fish paste and roe.
Flax and flaxseed.
Goat and kid skins.
Graphite.
Hemp.
Hyoscine.
Iodine.
Jewel bearings.
Jute and jute bur-laps.
Kaurigum.
Kyanite.
Lac.
Lead.
Leather.
Lentils.
Lignum vitae.
Lobster meat.
Mahogany.
Manganese.
Menthol.
Mica.
Mercury.
Mohair.
Monazite.
Nickel.
Nitroguanidine.
Nux vomica.
Olive oil.
Olives.
Opium.
Optical glass.
Palm oil.
Papaw juice or crude papaw.
Pate de foie gras.
Perilla oil.
Petroleum and the products derived therefrom.
Platinum.
Platinum group metals.
Pulp for paper production.
Pyrethrum flowers.
Quartz crystals.

Quebracho.
Quinidine.
Radium salts.
Rapeseed oil.
Rubber, crude, and milk of.
Rutile.
Sapphires and rubies.
Sardines.
Shellac.
Silk.
Sperm oil.
Spices.
Sugar.
Talc.
Tantalite.
Taploca.

Tea.
Teak.
Tin.
Tung oil.
Tungsten ore and concentrates.
Uranium (oxide and salts).
Vanadium.
Vanilla beans and extract.
Wattle bark.
Wax cornauba and ceresin.
Zinc.
Zirconium.

§ 405.109-2 *Supplies to be used in the construction, alteration, or repair of any public building or public work.*

Antimony.
Asbestos.
Balsa.
Chrome ore or chromite.
Clay, English ball or English china.
Copper.
Copper nickel alloy, natural.
Cork.
Jute and jute bur-laps.
Kaurigum.
Lac.
Mahogany.
Mercury.
Mica.
Nickel.
Platinum.
Rubber.
Silk.
Teak.
Tin.
Tung oil.
Tungsten.

SUBPART B—CANADIAN PURCHASES

§ 405.201 *Purchases from Canadian suppliers.* Any contract with a supplier or contractor located in the Dominion of Canada may be made with and administered through the Canadian Commercial Corporation (a corporation owned and controlled by the Government of Canada) which has offices at #2 Building, Lyon Street, Ottawa, and at 1205 Fifteenth Street NW. (Marshall Building) Washington, D. C. Under any such contract made with the Canadian Commercial Corporation, direct communication with the Canadian supplier or contractor is authorized only in connection with problems of inspection and technical matters; *Provided*, That, if any such problem would affect the contract price, approval of the Canadian Commercial Corporation shall be obtained. All payments under any such contract made with the Canadian Commercial Corporation shall be made to that Corporation at its Washington office.

§ 405.202 *Guarantee by Canadian Government.* The Canadian Government guarantees to the United States Government all commitments, obligations, and covenants of the Canadian Commercial Corporation in connection with any contract or order issued to said Corporation by any procuring activity of the United States Government. The Canadian Government has likewise waived notice of any change or modification which may be made from time to time in these commitments, obligations, or covenants.

SUBPART C—DUTY AND CUSTOMS

§ 405.301 *Purchases of war material abroad.* Although ordinarily duty must be paid on the importation of supplies purchased outside the United States, nevertheless foreign purchases made by the Government are exempt from any requirement of a customs bond. Furthermore, foreign emergency purchases of war material abroad, when made by

any Department, are exempt from duty (Act of June 30, 1914, 34 U. S. Code 568; Section 12 of Public Law 413, 80th Congress). Any decision that a foreign purchase is an "emergency purchase of war material" shall be made in accordance with procedures prescribed by each respective Department, and when accompanied by an entry certificate in the form set forth in § 405.301-1 shall be final and conclusive.

§ 405.301-1 *Entry certificate.* The entry certificate referred to in § 405.301 will be printed, stamped, or typed on the fact of Customs Form 7501 or attached thereto, will be executed by an officer or civilian official of the Department designated to execute such certificate, and will be substantially in the following form:

I certify that the procurement of this material constituted an emergency purchase of war material abroad, and it is accordingly requested that such material be admitted free of duty pursuant to [for the Department of the Navy, the Act of June 30, 1914, 34 U. S. Code 568] [for the Department of the Army or the Department of the Air Force, Section 12 of Public Law 413, 80th Congress].

§ 405.302 *Nature of war material.* Examples of supplies considered to be "war material" under the provisions of § 405.301 are the following:

- (a) Weapons, munitions, aircraft, vessels, or boats;
- (b) Supplies necessary for the manufacture, production, processing, repair, servicing, or operation of supplies listed in this paragraph;
- (c) Components of, or equipment for, supplies listed in this paragraph;
- (d) Agricultural, industrial, or other supplies used in the prosecution of war.

§ 405.303 *Nature of emergency purchases.* Examples of kinds of purchases considered to be "emergency purchases" under the provisions of § 405.301 are the following:

- (a) War material acquired by any Department in time of war or a national emergency and paid for from a military appropriation or received in exchange for anything of value obtained either under reciprocal aid or under other statutory authority;
- (b) War material purchased because of a shortage of domestic supply, pursuant to a decision that the supplies are necessary for the adequate maintenance of the Armed Services;
- (c) Captured enemy war material;
- (d) Materials requisitioned by United States Forces abroad;
- (e) Materials rebuilt from other materials owned by, captured by, or turned over to United States Forces;
- (f) War materials procured for the use of United States Forces abroad or United States vessels in foreign waters.

§ 405.304 *Customs duties and drawbacks.* Whenever any department purchases supplies with respect to which there might arise a claim to a refund or drawback of customs duties paid thereon (to the extent such drawback is authorized pursuant to The Tariff Act of 1930, 19 U. S. Code, Chapter 4), the price to be paid shall ordinarily include the customs duties, and accordingly the sup-

plier will have no claim to a drawback. On the other hand, when the price to be paid for any such purpose does not include the customs duties, then the supplier will have the right to claim any drawback with respect thereto: *Provided*, (a) He has reserved such right in connection with such sale or consignment and (b) he produces evidence that such reservation was made with the knowledge and consent of the exporter.

ADDITION OF PORTIONS OF REGULATIONS

Preamble. Sections I through VI of the Armed Services Procurement Regulation were initially published in the FEDERAL REGISTER under Title 10. Subsequently they were redesignated as Parts 400-405 of Title 34 (13 F. R. 7345). A republication of Parts 400-405 are published above. Sections X and XI, codified as Parts 409 and 410, are added as set forth below.

GORDON GRAY,
The Assistant Secretary
of the Army.
M. E. ANDREWS,
Assistant Secretary
of the Navy.
A. S. BARROWS,
Under Secretary of
the Air Force.

PART 409—BONDS AND INSURANCE

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AUTHORITY: §§ 409.001 to 409.303 issued under sec. 1 (a), (b), 54 Stat. 712, 55 Stat. 638, Pub. Law 413, 80th Cong.; 41 U. S. C. proceeding sec. 1 note, 50 U. S. C. App. 601-622; E. O. 8001, Dec. 27, 1941, 3 CFR, Cum. Supp.

§ 409.001 *Effective date of part.* This part shall be complied with on and after January 1, 1949, although compliance is authorized from the date of issuance.

SUBPART A—BONDS

§ 409.101 *Definitions.* As used in this subpart, the following terms shall have the meanings set forth below:

§ 409.101-1 *Bid bond.* A bid bond is a bond accompanying a bid in which the obligor obligates himself in an amount stated (the penal sum), which obligation, it is stated, is to be void if:

(a) The bid is not withdrawn after the opening within the period specified in the bid, or, if no shorter period is specified, within sixty days; and

(b) A written contract, with such bond or bonds as may be required, is executed within ten days after the prescribed forms are presented for signature.

§ 409.101-2 *Performance bond.* A performance bond is a bond which is executed in connection with a contract and which secures the performance and fulfillment of all the undertakings, covenants, terms, conditions and agreements contained in the contract.

§ 409.101-3 *Payment bond.* A payment bond is a bond which is executed in connection with a contract and which secures the payment of all persons supplying labor and material in the prosecution of the work provided for in the contract.

§ 409.101-4 *Advance payment bond.* An advance payment bond is a bond which secures the performance and the fulfillment of a contractual provision for the making of advance payments.

§ 409.101-5 *Patent infringement bond.* A patent infringement bond is a bond which secures the performance and fulfillment of the undertakings contained in a patent clause.

§ 409.101-6 *Construction contract.* The term "construction contract" means any contract for the construction, alteration or repair of buildings, bridges, roads, or other kinds of real property. It does not include any contract for the manufacturing, producing, furnishing, construction, alteration, repair, processing, or assembling of vessels, aircraft, or other kinds of personal property, regardless of the terms of any such contract as to payment or title.

§ 409.102 *Bid bonds.* Bid bonds may be required when, and only when, the solicitation of bids for a contract to be entered into as a result of formal advertising specifies that the contract is to be supported by a performance bond or by performance and payment bonds. When a solicitation of bids requires a bid bond, the requirement shall not be waived unless it is waived equally for all bidders. Whenever a bid bond is required, the penal sum thereof shall be in an amount deemed adequate by the Contracting Officer for the protection of the Government.

§ 409.103 *Performance bonds.*

§ 409.103-1 *Performance bonds in connection with contracts other than construction contracts.* The extent to which performance bonds will be required in connection with contracts other than construction contracts shall be in accordance with procedures prescribed by each respective Department, except that the requirement of such a bond shall not be waived when an invitation for bids requires a performance bond. Conversely, a performance bond shall not be required unless (a) the solicitation of bids requires such a bond, or (b) requirement of such a bond is in the interest of the Government and not prejudicial to the other bidders. Whenever a performance bond is required, the penal sum thereof shall be in an amount deemed adequate by the Contracting Officer for the protection of the Government.

§ 409.103-2 *Performance bonds in connection with construction contracts.* In accordance with the provisions of the act of August 24, 1935, as amended (40 U. S. C. 270a-270e) a performance bond shall be required in connection with any construction contract exceeding \$2,000 in amount. The penal sum of such bond shall be in an amount deemed adequate by the Contracting Officer for the protection of the Government. The requirement of a performance bond in connection with any construction contract may be waived for so much of the work under the contract as is to be performed in a foreign country. *Provided*, The Contracting Officer finds that it is impracticable for the contractor to furnish such bond.

§ 409.103-3 *Annual performance bonds.* Annual performance bonds may be used only in connection with contracts other than construction contracts. When such a bond is used and has been completely obligated in an amount equal to the penal sum thereof, an additional bond shall be obtained to cover additional contracts.

§ 409.104 *Payment bonds.*

§ 409.104-1 *Payment bonds in connection with contracts other than construction contracts.* The extent to which payment bonds will be required in connection with contracts other than construction contracts shall be in accordance with procedures prescribed by each respective Department, except that the requirement of such a bond shall not be waived when an invitation for bids requires a payment bond. Conversely, a payment bond shall not be required unless (a) the solicitation of bids requires such a bond, or (b) requirement of such a bond is in the interest of the Government and not prejudicial to the other bidders. Whenever a payment bond is required, the penal sum thereof shall be in an amount deemed adequate by the Contracting Officer for the protection of the Government.

§ 409.104-2 *Payment bonds in connection with construction contracts.* In accordance with the provisions of the act of August 24, 1935, as amended (40 U. S. C. 270a-270e) a payment bond shall be required in connection with any construction contract exceeding \$2,000 in

amount. The penal sums of such payment bonds shall be respectively as follows:

(a) When the contract price is not more than \$1,000,000, the penal sum shall be 50 percent of the contract price;

(b) When the contract price is more than \$1,000,000 but not more than \$5,000,000, the penal sum shall be 40 percent of the contract price; and

(c) When the contract price is more than \$5,000,000, the penal sum shall be \$2,500,000.

The requirement of a payment bond may be waived for so much of the work under the contract as is to be performed in a foreign country. *Provided*, The Contracting Officer finds that it is impracticable for the contractor to furnish such bond.

§ 409.105 *Advance payment bonds.* The extent to which advance payment bonds will be required shall be in accordance with procedures prescribed by each respective Department. Whenever such a bond is required, the penal sum thereof shall be in an amount deemed adequate by the Contracting Officer for the protection of the Government.

§ 409.106 *Patent infringement bonds.* Patent infringement bonds shall be required only in connection with contracts containing provision for patent indemnity, and then only if a performance bond has not been executed and if the financial responsibility of the contractor is unknown or doubtful. Whenever such a bond is required, the penal sum thereof shall be in an amount deemed adequate by the Contracting Officer for the protection of the Government.

§ 409.107 *Other types of bonds.* Other types of bonds may be used only when, in the opinion of the head of the procuring activity concerned, such bonds are necessary or desirable in connection with the procurement of particular supplies or services.

§ 409.108 *Execution and administration of bonds.* The forms and provisions of bonds, and their preparation, execution and administration, shall be in accordance with the provisions of this subchapter and with procedures prescribed by each respective Department.

SUBPART B—SURETIES ON BONDS

§ 409.201 *General requirements of sureties.* Every bond required or used in connection with the procurement of supplies or services shall be supported by good and sufficient surety (corporate or individual) in accordance with procedures prescribed by each respective Department.

§ 409.202 *Options in lieu of sureties.* Any one or more of the following types of security listed below may be deposited by the contractor in lieu of furnishing corporate or individual sureties on bonds. Any such security accepted by the Contracting Officer shall be promptly turned over to the disbursing officer concerned, and such security or its equivalent shall be returned to the contractor when the obligation of the bond has by its terms ceased.

§ 409.202-1 *United States bonds or notes.* In accordance with the provisions

of the act of February 24, 1919, as amended (6 U. S. C. 15) and Treasury Department Circular No. 154 (February 6, 1935) any person required to furnish a bond has the option, in lieu of furnishing surety or sureties thereon, of depositing United States bonds or notes in an amount equal at their par value to the penal sum of the bond, together with an agreement authorizing the collection or sale of such United States bonds or notes in the event of default on the penal bond.

§ 409.202-2 *Certified or cashier's checks, bank drafts, money orders, or currency.* Any person required to furnish a bond has the option, in lieu of furnishing surety or sureties thereon, of depositing a certified or cashier's check, a bank draft, a Post Office money order, or currency, in an amount equal to the penal sum of the bond: *Provided*, That the penal sum of the bond is not in excess of \$50,000. Certified or cashier's checks, bank drafts, or Post Office money orders shall be drawn to the order of the Treasurer of the United States.

§ 409.203 *Consent of surety.* In connection with any amendment, modification or supplemental agreement which would otherwise effect the release of a surety, or in any other situation as prescribed by each respective Department, the Contracting Officer shall obtain the written consent thereto of the surety or sureties on the existing bond or bonds (notwithstanding the fact that there may be an additional bond supported by a new surety) *Provided*, That no such consent need be obtained if there is an increased or additional bond supported by the same surety or sureties.

SUBPART C—INSURANCE

§ 409.301 *Insurance in connection with fixed-price contracts.* In connection with fixed-price contracts, each Department (a) shall require such insurance as is required by law, and (b) may in addition require insurance, to the extent deemed necessary and in accordance with procedures prescribed by each respective Department, only (1) to protect the Government with respect to responsibilities imposed by the Government on the contractor in connection with Government property used or furnished for the performance of the contract, or (2) in special cases when insurance is deemed necessary in connection with the performance of the contract.

§ 409.302 *Insurance in connection with cost-reimbursement contracts.* In connection with cost-reimbursement contracts, the kinds of insurance listed below shall ordinarily be required by each Department unless the contractor is legally immune from liability or has an acceptable program of self-insurance approved in accordance with procedures prescribed by each respective Department. No other kind of insurance shall be required or approved unless (a) required by law, or (b) deemed necessary, in accordance with procedures prescribed by each respective Department, (1) to protect the Government with respect to responsibilities imposed by the Government on the contractor in connection with Government property used or furnished for the performance of the con-

tract, or (2) in special cases when insurance is deemed necessary in connection with the performance of the contract.

§ 409.302-1 *Workmen's compensation and employer's liability insurance.* Workmen's compensation and employer's liability insurance shall be in an amount necessary to provide adequate coverage for all industrial injuries and occupational diseases incurred by the contractor's employees in the performance of the contract.

§ 409.302-2 *General liability insurance.* General liability insurance shall be in an amount necessary to provide adequate protection against liability to persons other than the contractor's employees for bodily injuries and for damage to the property of third persons, resulting from the performance of the contract.

§ 409.302-3 *Automobile liability insurance.* Automobile bodily injury and property damage liability insurance, on all vehicles used off the contractor's premises in connection with the performance of the contract, shall be in an amount necessary to provide adequate protection to the Government.

§ 409.302-4 *Aircraft liability insurance.* Wherever applicable, aircraft liability insurance shall be in an amount necessary to provide adequate protection to the Government.

§ 409.303 *Contract clauses and administration of insurance requirements.* Contract clauses with respect to insurance, and the administration of insurance requirements, shall be in accordance with the provisions of this subchapter and with procedures prescribed by each respective Department.

PART 410—FEDERAL, STATE AND LOCAL TAXES

Sec.
410.001 Effective date of part.

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SUBPART D—CONTRACT CLAUSES

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AUTHORITY: §§ 410.001 to 410.402 issued under secs. 1 (a), (b), 54 Stat. 712, 55 Stat. 638, Pub. Law 413, 80th Cong.; 41 U. S. C. preceding sec. 1 note, 50 U. S. C. App. 601-622; E. O. 9001, Dec. 27, 1941, 3 CFR, Cum. Supp.

§ 410.001 *Effective date of part.* This part shall be compiled with on and after January 1, 1949, although compliance is authorized from the date of issuance.

SUBPART A—FEDERAL EXCISE TAXES

§ 410.100 *Scope of subpart.* This subpart deals with Federal excise taxes imposed by the Internal Revenue Code upon certain supplies and services procured by any Department; and in connection with each tax indicates (a) the nature of the tax (manufacturers' excise, retailers' excise, transportation, or communication) (b) the basis for an application of the tax, (c) the particular supplies subject to the tax, and (d) the rate of tax. An alphabetical list of supplies and services subject to Federal excise taxes, together with the applicable sections of the Internal Revenue Code, is set forth at the end of this subpart. The availability of exemptions from these taxes is covered in Subpart B. Attention is directed to the fact that the supplies and services subject to tax, and the rates of tax imposed thereon, as set forth in this subpart, are subject to change from time to time by amendments to the Internal Revenue Code and by changes in applicable Treasury Regulations.

§ 410.101 *Manufacturers' excise taxes.* Chapter 29 of the Internal Revenue Code, as implemented by Treasury Regulations 44 and 46 (26 CFR, Parts 314 and 316), imposes a manufacturers' excise tax upon various types of supplies, enumerated in §§ 410.101-1 to 410.101-14, sold by the manufacturer, producer, or importer. In general, this tax is based in each instance on sales price (including any charges for packaging, but excluding incidental charges such as transportation, installation, etc.) and attaches at the time when title passes from the seller. The lease of supplies is considered a sale for purposes of this tax. Jewelry and luggage subject to a retailers' excise tax (covered in §§ 410.102-1 and 410.102-4) are not subject to a manufacturers' excise tax.

§ 410.101-1 *Tires and inner tubes.* A tax is imposed with respect to sales of the following supplies at the indicated rates:
(a) Tires wholly or in part of rubber, including synthetic or substitute rubber

(exclusive of metal rims or rim bases)—5 cents a pound on total weight;

(b) Inner tubes (for tires) wholly or in part of rubber, including synthetic or substitute rubber—9 cents a pound on total weight.

§ 410.101-2 *Automotive equipment.* A tax is imposed with respect to sales of the following supplies at the indicated rates:
(a) Chassis and bodies (including parts or accessories sold therewith) of the following types of automotive equipment (excluding tractors, and motor-driven machines and handling equipment used on premises of factories and railway stations)

(1) Automobile trucks and buses—5%.

(2) Truck and bus trailers and semi-trailers—5%.

(3) Trailers and semi-trailers suitable for use in connection with passenger automobiles—7%.

(4) Other automobiles—7%.

(b) Tractors (including parts or accessories sold therewith) of the kind chiefly used for highway transportation in combination with a trailer or semi-trailer—5%.

(c) Motorcycles (including parts or accessories sold therewith)—7%.

(d) Parts or accessories (such as spark plugs, storage batteries, leaf springs, coils, timers and tire chains suitable for use in connection with any of the supplies enumerated in paragraphs (a) (b) and (c); but excluding tires, inner tubes and automobile radios, and also excluding parts and accessories sold to a manufacturer of any of the supplies enumerated in paragraphs (a) (b) and (c) *Provided*, That an appropriate certificate of the purchaser is given to the seller stating that the purchaser is a manufacturer of such supplies) sold for any of the supplies enumerated in paragraphs (a), (b) and (c)—5%.

Where a manufacturer sells tax-paid tires, inner tubes or automobile radios on or in connection with, or with the sale of, any of the supplies enumerated in paragraphs (a), (b) and (c) he may take appropriate credit against the tax due on his sale of such automotive equipment.

§ 410.101-3 *Radio and musical equipment.* A tax of 10% is imposed with respect to sales of the following supplies (including, except in the case of musical instruments, parts or accessories sold therewith)

(a) Radio receiving sets, automobile radio receiving sets, combination radio and phonograph sets, and phonographs;

(b) Chassis, cabinets, tubes, reproducing units, power packs, antennae of the "built-in" type, and phonograph mechanisms, suitable for use in connection with any of the supplies enumerated in paragraph (a), whether or not primarily adapted for such use;

(c) Phonograph records;

(d) Musical instruments.

§ 410.101-4 *Refrigerating and air-conditioning equipment.* A tax of 10% is imposed with respect to sales of the following supplies (including parts or accessories sold therewith)

(a) Household type refrigerators (for single or multiple cabinet installations) having, or designed for use with, a me-

chanical refrigerating unit operated by electricity, gas, kerosene, or gasoline;

(b) Cabinets, compressors, condensers, evaporators, expansion units, absorbers, and controls for, or suitable for use with, the supplies described in paragraph (a), except when sold as component parts of complete refrigerators or refrigerating or cooling apparatus;

(c) Self-contained air-conditioning units.

§ 410.101-5 *Sporting goods.* A tax of 10% is imposed with respect to sales of sporting goods and equipment.

§ 410.101-6 *Electric, gas and oil appliances.* A tax of 10% is imposed with respect to sales of electric, gas, and oil appliances such as fans, heaters (other than electric air furnaces) cooking appliances, etc.

§ 410.101-7 *Photographic apparatus.* A tax is imposed with respect to sales of the following supplies at the indicated rates:

(a) Cameras (except cameras weighing more than four pounds exclusive of lens and accessories) and lenses, photographic apparatus and equipment, and any apparatus or equipment designed especially for use in the taking of photographs or motion pictures or in developing, printing, or enlarging photographs or motion pictures—25%

(b) Unexposed photographic films (including motion picture films, unless used or resold for use in the making of news reel motion picture films, but not including X-ray film) photographic plates and sensitized paper—15%.

§ 410.101-8 *Business and store machines.* A tax of 10% is imposed with respect to sales of business and store machines, excluding cash registers of the type used in registering over-the-counter retail sales.

§ 410.101-9 *Electric light bulbs and tubes.* A tax of 20% is imposed with respect to sales of electric light bulbs and tubes, excluding supplies taxable under any other manufacturers' excise tax.

§ 410.101-10 *Firearms, shells and cartridges.* A tax of 11% is imposed with respect to sales of firearms (except pistols and revolvers, as to which see § 410.103), shells and cartridges.

§ 410.101-11 *Matches.* A tax of 2 cents per 1,000 is imposed with respect to sales of matches, except that in the case of fancy wooden matches and wooden matches having a stained, dyed, or colored stick or stem, packed in boxes or in bulk, the tax is 5½ cents per 1,000 matches.

§ 410.101-12 *Electrical energy.* A tax of 3½% is imposed with respect to sales of electrical energy for domestic or commercial consumption and not for resale (except when resold by an owner or lessee of a building to the tenants therein) This tax does not apply to:

(a) Electric and power plants owned publicly, or owned cooperatively or by nonprofit corporations engaged in rural electrification;

(b) Sales to any State or territory, or political subdivision thereof;

(c) Sales for (1) Government consumption (other than separately metered sales to the Government for use in officers' quarters or other residences furnished by the Government) (2) industrial consumption; or (3) consumption by public utilities, radio communication companies, railroads, etc.

§ 410.101-13 *Gasoline.* A tax of 1½ cents a gallon is imposed with respect to sales of gasoline by the producer or importer thereof, or by any producer of gasoline. The term "gasoline" includes:

(a) All products commonly or commercially known or sold as gasoline, benzol, benzene, or naphtha, regardless of their classifications or uses; and

(b) Any other liquid fuel (excluding kerosene, gas oil, or fuel oil) *Provided*, That it is sold for or used in connection with the propulsion of motor vehicles, motor boats, or airplanes.

§ 410.101-14 *Lubricating oils.* A tax of 6 cents a gallon is imposed with respect to lubricating oils. The term "lubricating oils" includes all oils, regardless of their origin, which are sold as lubricating oil and all oils which are suitable for use as a lubricant, but does not include products of the type commonly known as grease.

§ 410.102 *Retailers' excise taxes.* Chapters 9A and 19 of the Internal Revenue Code, as implemented by Treasury Regulations 51 (26 CFR, Part 320) impose a retailers' excise tax upon various types of supplies, enumerated in §§ 410.102-1 to 410.102-4, sold at retail. Such supplies, when sold to the Government for use or consumption, are considered to be sold at retail. In general, this tax is based in each instance on sales price (including any charges for packaging, but excluding incidental charges such as transportation, installation, etc.) and attaches at the time when title passes from the seller. The lease of supplies is considered a sale for purposes of this tax. In the case of any supplies classifiable under more than one retailers' excise tax, only one tax on such supplies is imposed; and where the tax rates differ, the supplies are subject to tax at the highest rate.

§ 410.102-1 *Jewelry, etc.* A tax of 20% is imposed with respect to sales of all supplies commonly or commercially known as jewelry, whether real or imitation; pearls, precious and semi-precious stones, and imitations thereof; supplies made of, or ornamented, mounted or fitted with precious metals or imitations thereof; watches and clocks, and cases and movements thereof; gold, gold-plated, silver or sterling flatware or hollow ware, and silver-plated hollow ware; opera glasses, lorgnettes; marine glasses, field glasses and similar optical instruments, if portable. The rate of tax is 10% (instead of 20%) of the sales price of watches selling at retail for not more than \$65 and alarm clocks selling at retail for not more than \$5. The tax does not apply to religious articles, surgical instruments, watches designed especially for use by the blind, frames or mountings for eyeglasses, or devices prescribed for use in connection with the uniforms of the Armed Services.

§ 410.102-2 *Furs.* A tax of 20% is imposed with respect to sales of supplies made of fur on the hide or pelt, and sales of supplies of which such fur is the component of chief value—that is, a value three times that of the next most valuable component. The tax applies although the pelt is furnished by the customer.

§ 410.102-3 *Toilet goods.* A tax of 20% is imposed with respect to sales of perfumes, cosmetics, hair dressings, and any other similar toilet supplies.

§ 410.102-4 *Luggage.* A tax of 20% is imposed with respect to sales of the following supplies (including fittings or accessories sold therewith)

(a) Trunks, suitcases, toilet cases, hat boxes, brief cases made of leather or imitation leather, and other similar items of luggage;

(b) Salesmen's sample and display cases;

(c) Purses, handbags, wallets, and card, pass and key cases.

§ 410.103 *Excise tax on pistols and revolvers.* Chapter 25A of the Internal Revenue Code, as implemented by Treasury Regulations 47 (26 CFR, Part 302), imposes an excise tax of 11% upon pistols and revolvers sold or leased by the manufacturer, producer, or importer.

§ 410.104 *Tax on transportation of persons.* Chapter 30 of the Internal Revenue Code, as implemented by Treasury Regulations 42F (26 CFR, Part 130, Subpart F) imposes a tax of 15% upon the amount paid within the United States for the transportation of persons by rail, motor vehicle, water, or air, within or without the United States, and for seating or sleeping accommodations in connection with such transportation: *Provided*, That this tax shall not apply with respect to any part of such transportation which is outside the northern portion of the Western Hemisphere. In computing such tax, there is excluded (a) separable and itemized charges other than those for transportation of a person, (b) charges for transportation of freight that includes also transportation of caretakers or messengers for which no specific charge as such is made, and (c) charges not exceeding 35 cents, certain commutation tickets, and charges for transportation by motor vehicles with seating capacity of less than ten persons and not operated on an established line.

§ 410.105 *Tax on transportation of property.* Chapter 30E of the Internal Revenue Code, as implemented by Treasury Regulations 113 (26 CFR, Part 143) imposes a tax of 3% (4 cents per short ton in the case of coal, including coke and briquettes) upon the amount paid within the United States for the transportation of property (including (a) separable and itemized charges for baggage transported in connection with the transportation of persons, and (b) charges for services furnished in connection with the transportation of property) by a person engaged in the business of transporting property for hire, by means of rail, motor vehicle, water, or air, from one point inside the United States to another or, in the case of transportation

from a point outside the United States, for that part of the transportation which takes place inside the United States. In computing such tax, there is excluded all amounts paid to the Post Office Department for the transportation of property, and all amounts paid for the transportation of property (a) to or from the American National Red Cross, (b) to or from the government of a state or territory (or political subdivision thereof) or of the District of Columbia, and (c) to or from an international organization as designated by the President. No amount paid for the transportation of property is subject to tax if and to the extent that a tax on such transportation has previously been paid. An amount paid for the transportation of coal is not taxable if there has been a previous taxable transportation of such coal and if a statement to that effect is endorsed on the bill of lading or other shipping papers; furthermore, an amount paid for the transportation of coke or briquettes made from coal is not subject to tax: *Provided*, There has been a previous taxable transportation of the coal or coal dust from which such coke or briquettes were manufactured.

§ 410.106 Tax on transportation of oil by pipe line. Chapter 30A of the Internal Revenue Code, as implemented by Treasury Regulations 42D (26 CFR, Part 130, Subpart D) imposes a tax of $4\frac{1}{2}\%$ upon the amount paid for the transportation by pipe line of crude petroleum and liquid products thereof. If no charge is made for such transportation, or if the payment is less than the fair charge and is made under a transaction not entered into at "arm's length", the tax is imposed upon the fair charge for such transportation.

§ 410.107 Tax on communication facilities. Chapter 30B of the Internal Revenue Code, as implemented by Treasury Regulations 42E (26 CFR, Part 130, Subpart E) imposes a tax upon the following types of communication facilities at the indicated rates:

(a) Telephone and radio telephone messages paid for within the United States (excluding any such messages for which the toll charge is 24 cents or less)—25%

(b) Telegraph, cable, and radio dispatches and messages paid for within the United States:

(1) Domestic—25%.

(2) International—10%.

(c) Leased wire, teletypewriter, or talking circuit special services (excluding any amount paid for such services used exclusively in rendering a service taxable under paragraph (d) of this section)—25%.

(d) Wire and equipment service (including stock quotation and information service, burglar alarm or fire alarm service, and all other similar services except services taxable under paragraph (c) of this section)—8%.

(e) Local telephone service and other telephone service not taxable under paragraphs (a) to (d) of this section (excluding amounts paid for the installation of instruments, wires, poles, switchboards, apparatus and equipment)—15%.

§ 410.199 List of supplies and services subject to Federal excise taxes.

Supplies and services	Internal Revenue Code Section (26 U. S. Code)	Treasury Regulations Number and 26 CFR Section	ASPR Section
Automotive equipment.....	3473	47-316.50	410.101-2
Business and store machines.....	3473 (a) (2)	47-316.149	410.101-8
Communication facilities.....	3475	42-120.20	410.107
Electrical energy.....	3415	47-316.160	410.101-12
Electric, gas and oil appliances.....	3466 (a) (3)	47-316.110	410.101-6
Electric light bulbs and tubes.....	3466 (a) (10)	47-316.180	410.101-9
Firearms, shells and cartridges.....	3497	47-316.80	410.101-10
Furs.....	2401	51-320.49	410.102-2
Gasoline.....	3412	44-314.30	410.101-13
Jewelry, etc.....	2430	51-320.20	410.102-1
Luggage.....	1651	51-320.60	410.102-4
Matches.....	3469	44-314.50	410.101-11
Oils, lubricating.....	3413	44-314.40	410.101-14
Photographic apparatus.....	3466 (a) (4)	47-316.120	410.101-7
Pistols and revolvers.....	2700	47	410.103
Radio and musical equipment.....	3434	47-316.60	410.101-3
Refrigerating and air-conditioning equipment.....	3435	47-316.70	410.101-4
Sporting goods.....	3466 (a) (1)	47-316.60	410.101-5
Tires and inner tubes.....	3400	47-316.20	410.101-1
Toilet goods.....	2422	51-320.50	410.102-3
Transportation of oil by pipe line.....	3470	42-120.20	410.106
Transportation of persons.....	3470	42-120.20	410.104
Transportation of property.....	3475	112-143.0	410.105

SUBPART B—EXEMPTIONS FROM FEDERAL EXCISE TAXES

§ 410.200 Scope of subpart. This subpart deals with the availability of exemptions from the taxes set forth in subpart A, and covers (a) the applicability of exemptions and (b) the policy with respect to claiming exemptions.

§ 410.201 Supplies and services for the use of the Government. By virtue of action taken by the Secretary of the Treasury, pursuant to the authority of section 307 (c) of the Revenue Act of 1943, as amended (26 U. S. C. 3411 note) exemption is available from the following Federal excise taxes to the extent indicated:

(a) Tax on communication facilities (see § 410.107) furnished directly to the Government (as distinguished from being furnished to a Government contractor) and paid for directly by the Government, which exemption is obtainable and shall be obtained without the use of any exemption certificate;

(b) Tax on transportation of persons (see § 410.104) for transportation furnished to the Government upon a Government transportation request, which exemption is obtainable and shall be obtained by use of such transportation request; and

(c) Tax on transportation of property (see § 410.105), for transportation to or from the Government on a Government bill of lading, which exemption is obtainable and shall be obtained by use of such bill of lading.

§ 410.202 Supplies for exportation. Pursuant to the authority of sections 2705 and 3449 of the Internal Revenue Code and applicable Treasury Regulations, exemption is available from manufacturers' excise taxes with respect to sales of supplies for export, or for shipment to a possession of the United States: *Provided*, Such exportation or shipment in fact occurs within six months after title passes to the purchaser. This exemption shall be made use of, by means of purchase on a tax-exclusive basis and furnishing required proof of exportation or shipment, only when (a) the purchase is substantial, (b) exportation, or shipment to a possession, is intended

to follow in not more than six months after title passes to the Government, and (c) in accordance with procedures prescribed by each respective Department, it is advantageous to make use of such exemption.

§ 410.203 Supplies for ships and aircraft. Pursuant to the authority of section 3451 of the Internal Revenue Code and applicable Treasury Regulations, exemption is available from manufacturers' excise taxes with respect to sales of supplies for use as sea stores or for use as fuel supplies, ships' stores, or legitimate equipment necessary for the navigation, propulsion, and upkeep of (a) vessels of war or military aircraft (including guided missiles and pilotless aircraft) owned by the United States or by any foreign nation, or (b) vessels employed in the fishing or whaling business or actually engaged in trade between the Atlantic and Pacific ports of the United States, or (c) vessels (including civil aircraft) actually engaged in foreign trade or in trade between the United States and any of its possessions. This exemption shall be made use of, by means of purchase on a tax-exclusive basis and execution of an approved tax exemption certificate, only when, in accordance with procedures prescribed by each respective Department, it is advantageous to make use of such exemption.

§ 410.204 Supplies sold for further manufacture. Pursuant to the authority of section 3442 of the Internal Revenue Code and applicable Treasury Regulations, exemption is available from manufacturers' excise taxes with respect to sales of any supplies other than tires, inner tubes and automobile radios (a) for use in the manufacture or production of taxable supplies or as component parts thereof, or (b) for resale for such use, which exemption is obtainable by the manufacturer and requires no action by the Contracting Officer. The contract price for such supplies purchased by any Department shall not include an amount for any manufacturers' excise tax from which an exemption is available to the manufacturer.

§ 410.205 Supplies under certain prior contracts.

§ 410.205-1 Contracts prior to June 1, 1944. With respect to contracts entered into prior to June 1, 1944, and any amendments and change orders thereto, exemption is available from all manufacturers' and retailers' excise taxes, and shall be claimed in accordance with procedures prescribed by each respective Department.

§ 410.205-2 Contracts prior to July 1, 1947. With respect to contracts entered into prior to July 1, 1947, and any amendments and change orders thereto, exemption is available from Federal excise taxes with respect to sales of (a) radio and musical equipment (§ 410.101-3) (b) firearms, shells, and cartridges (§ 410.101-10) and (c) pistols and revolvers (§ 410.103) which exemption shall be claimed in accordance with procedures prescribed by each respective Department.

§ 410.206 Other exemptions. There are also available certain other exemptions from Federal excise taxes. Such exemptions shall be claimed only to the extent and in accordance with procedures prescribed by each respective Department.

§ 410.207 Tax exemption forms. The applicable standard Government tax exemption forms shall be used in accordance with procedures prescribed by each respective Department.

SUBPART C—STATE AND LOCAL TAXES

§ 410.301 Applicability. As a general rule, Government purchases are exempt from state and local taxes. This exemption shall be made use of to the fullest extent available, by means of purchase on a tax-exclusive basis and execution of an approved tax exemption certificate. Whenever there is any doubt as to the availability of such exemption, the matter shall be referred to the appropriate office of the Department concerned.

§ 410.302 Tax exemption forms. Tax exemption forms with respect to state and local taxes, and the use thereof, shall be in accordance with procedures prescribed by each respective Department.

SUBPART D—CONTRACT CLAUSES

§ 410.401 Fixed-price contracts. The following clause is approved for use, at the option of the Contracting Officer, in fixed-price contracts:

FEDERAL, STATE AND LOCAL TAXES

(a) *Definitions.* As used throughout this clause, the following terms shall have the meanings set forth below:

(1) The term "direct tax" means any tax or duty directly applicable to the completed supplies or services covered by this contract, or any other tax or duty from which the Contractor or this transaction is exempt. It includes any tax or duty directly applicable to the importation, production, processing, manufacture, construction, sale, or use of such supplies or services; it also includes any tax levied on, with respect to, or measured by sales, receipts from sales, or use of the supplies or services covered by this contract. The term does not include transportation taxes, unemployment compensation taxes, social security taxes, income taxes, excess-prof-

its taxes, capital stock taxes, property taxes, and such other taxes as are not within the definition of the term "direct tax" as set forth above in this paragraph.

(ii) The term "the contract date" means the effective date of this contract if it is a negotiated contract, or the date set for the opening of bids if it is a contract entered into as a result of formal advertising.

(b) *Federal taxes.* Except as may be otherwise provided in this contract, the contract price includes all applicable Federal taxes in effect on the contract date.

(c) *State or local taxes.* Except as may be otherwise provided in this contract, the contract price does not include any State or local direct tax in effect on the contract date.

(d) *Evidence of exemption.* The Government agrees, upon request of the Contractor, to furnish a tax exemption certificate or other similar evidence of exemption with respect to any direct tax not included in the contract price pursuant to this clause; and the Contractor agrees, in the event of the refusal of the applicable taxing authority to accept such evidence of exemption, (i) promptly to notify the Contracting Officer of such refusal, (ii) to cause the tax in question to be paid in such manner as to preserve all rights to refund thereof, and (iii) if so directed by the Contracting Officer, to take all necessary action, in cooperation with and for the benefit of the Government, to secure a refund of such tax (in which event the Government agrees to reimburse the Contractor for any and all reasonable expenses incurred at its direction).

(e) *Price adjustment.* If, after the contract date, the Federal Government or any State or local government either (i) imposes or increases (or removes an exemption with respect to) any direct tax, or any tax directly applicable to the materials or components used in the manufacture or furnishing of the completed supplies or services covered by this contract, or (ii) refuses to accept the evidence of exemption, furnished under paragraph (d) hereof, with respect to any direct tax excluded from the contract price, and if under either (i) or (ii) the Contractor is obliged to and does pay, or bear the burden of any such tax (and does not secure a refund thereof), the contract price shall be correspondingly increased. If, after the contract date, the Contractor is relieved in whole or in part from the payment or the burden of any direct tax included in the contract price, or any tax directly applicable to the materials or components used in the manufacture or furnishing of the completed supplies or services covered by this contract, the Contractor agrees promptly to notify the Contracting Officer of such relief, and the contract price shall be correspondingly decreased or the amount of such relief paid over to the Government. Invoices or vouchers covering any increase or decrease in contract price pursuant to the provisions of this paragraph shall state the amount thereof, as a separate added or deducted item, and shall identify the particular tax imposed, increased, eliminated, or decreased.

(f) *Refund or drawback.* If any tax or duty has been included in the contract price or the price as adjusted under paragraph (e) of this clause, and if the Contractor is entitled to a refund or drawback by reason of the export or re-export of supplies covered by this contract, or of materials or components used in the manufacture or furnishing of the completed supplies or services covered by this contract, the Contractor agrees that he will promptly notify the Contracting Officer thereof and that the amount of any such refund or drawback obtained will be paid over to the Government or credited against amounts due from the Government under this contract; *Provided, however,* That the Contractor shall not be required to apply for such refund or drawback unless so requested by the Contracting Officer.

§ 410.402 Cost-reimbursement contracts. No specific tax clause is required in any cost-reimbursement contract. In all such contracts the problem of Federal, State and local taxes (which presents solely a question of allowability of costs in connection with the performance of cost-reimbursement contracts) is covered in the contract clause dealing with reimbursement of costs and is treated elsewhere in this subchapter in the part entitled "Contract Cost Principles."

[F. R. Doc. 49-893; Filed, Feb. 7, 1949; 8:53 a. m.]

TITLE 43—PUBLIC LANDS: INTERIOR

Chapter I—Bureau of Land Management, Department of the Interior

[Circular 1722]

PART 196—PHOSPHATE LEASES AND USE PERMITS

Correction

In Federal Register Document 49-703, appearing at page 411 of the issue for Saturday, January 29, 1949, the original document has been corrected so that the twenty-fourth line of § 196.9 will read, "annual rental deposited by the"

Appendix—Public Land Order [Public Land Order 549]

ALASKA

WITHDRAWING CERTAIN PUBLIC LAND AS ADMINISTRATIVE SITE FOR BUREAU OF LAND MANAGEMENT AND PARTIALLY REVOKING EXECUTIVE ORDER NO. 8102 OF APRIL 29, 1939

By virtue of the authority vested in the President and pursuant to Executive Order No. 9337 of April 24, 1943, it is ordered as follows:

Subject to valid existing rights and the provisions of existing withdrawals, the following-described land in Alaska is hereby withdrawn from all forms of appropriation under the public-land laws, including the mining laws but not the mineral leasing laws, and reserved for the use of the Bureau of Land Management, Department of the Interior, as an administrative site:

SEWARD MERIDIAN

T. 13 N., R. 3 W.,
Sec. 9, SE¼SW¼.

The area described contains 40 acres. Executive Order No. 8102 of April 29, 1939, reserving certain public land for the use of the War Department as a military reservation is hereby revoked as to the above described tract.

The land is subject to Power Site Classification No. 107 of June 12, 1925.

C. GIRARD DAVIDSON,
Assistant Secretary of the Interior

JANUARY 31, 1949.

[F. R. Doc. 49-910; Filed, Feb. 7, 1949; 8:54 a. m.]

TITLE 49—TRANSPORTATION AND RAILROADS

Chapter I—Interstate Commerce Commission

PART 122—MONTHLY OPERATING REPORTS REPORTS OF OPERATING STATISTICS

At a session of the Interstate Commerce Commission, Division 1, held at its office in Washington, D. C., on the 28th day of October A. D. 1948.

The matter of monthly reports of operating statistics of Class I steam railways being under consideration:

It is ordered, That the order dated September 20, 1944, in the matter of monthly reports of operating statistics of Class I steam railways (49 CFR, 122.3) be, and it is hereby modified with re-

spect to the forms of monthly reports, effective January 1, 1949, as follows:

§ 122.3 *Operating statistics.* Commencing with the month of January 1949, and monthly thereafter until further order, each and every Class I steam railway, including Class I switching and terminal companies, subject to the provisions of section 20, Part I of the Interstate Commerce Act, is hereby required to file monthly reports of operating statistics in accordance with forms of reports and notes of instructions thereon designated:

Form OS-A—Freight Train Performance
Form OS-B—Passenger Train Performance
Form OS-C—Yard Service Performance
Form OS-D—Revenue Traffic
Form OS-E—Fuel and Power Statistics
Form OS-F—Motive Power and Car Equipment

which forms are attached hereto¹ and made a part of this order: *Provided however,* That Class I switching and terminal companies are not required to submit reports on forms designated Forms OS-A, OS-B, and OS-D. Such monthly reports shall be filed in duplicate in the Bureau of Transport Economics and Statistics, Interstate Commerce Commission, Washington, D. C., on or before the dates indicated in the notice on each form. (24 Stat. 386, 34 Stat. 593, 35 Stat. 649, 36 Stat. 556, 41 Stat. 493, 54 Stat. 916; 49 U. S. C. 20 (1)-(8))

By the Commission, Division 1.

[SEAL]

W. P. BARTEL,
Secretary.

[F. R. Doc. 49-806; Filed, Feb. 7, 1949;
8:51 a. m.]

PROPOSED RULE MAKING

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Alaska Game Commission

[50 CFR, Parts 46, 161-163]

ALASKA WILDLIFE PROTECTION

NOTICE OF PROPOSED RULE MAKING

Pursuant to section 4 (a) of the Administrative Procedure Act, approved June 11, 1946 (60 Stat. 237, 239) notice is hereby given:

(a) That under authority contained in section 9 of the Alaska Game Law (57 Stat. 306; 48 U. S. C. 198) the Secretary of the Interior intends to adopt amendments to the Alaska Game Regulations modifying existing seasons, bag limits, and closure of areas necessary to insure proper conservation and utilization of the wildlife resources of Alaska. In addition, some provisions relating primarily to the administration of the Alaska Game Law may be amended in minor respects for the purpose of clarifying the application of the regulations and to facilitate the administration of the Alaska Game Law.

(b) That under authority of section 8 and sub-division M of section 10 of the Alaska Game Law of July 1, 1943 (57 Stat. 301, 310) as amended, the Alaska Game Commission intends to consider the advisability of amending the regulations of the Alaska Game Commission respecting qualification of guides, poisons, licenses, and establishment of the fur management areas.

The regulations referred to in paragraphs (a) and (b) above are to be effective beginning July 1, 1949.

Interested persons are hereby notified that at a hearing of the Alaska Game Commission to be held at the Federal Building, Juneau, Alaska, on February 14, 1949, the said proposed regulations will be considered, and any such person may present his views, data or arguments with respect thereto. Such interested persons are also hereby given an opportunity to participate in preparing the regulations for issuance as set forth by submitting their views, data, or arguments in writing to Albert M. Day, Director, Fish and Wildlife Service, Washington 25, D. C. To assure full consideration of such communications, they must be received in the Fish and Wild-

life Service not later than March 15, 1949.

[SEAL]

J. A. KRUG,
Secretary of the Interior.

FEBRUARY 4, 1949.

[F. R. Doc. 49-965; Filed, Feb. 7, 1949;
9:00 a. m.]

DEPARTMENT OF AGRICULTURE

Production and Marketing Administration

[7 CFR, Part 966]

[Docket No. A0164-A1]

HANDLING OF ORANGES GROWN IN CALIFORNIA AND ARIZONA

DECISION WITH RESPECT TO PROPOSED MARKETING AGREEMENT AND TO PROPOSED AMENDMENTS TO MARKETING ORDER

Correction

In Federal Register Document 49-533, appearing at page 297 of the issue for Thursday, January 20, 1949, in the third column on page 305, paragraph (a) (3) should read: "(3) the total quantity disposed of for export, showing the destination and quantity of each such disposition;"

NOTICES

DEPARTMENT OF THE TREASURY

United States Coast Guard

[CGFR 49-1]

APPROVAL OF EQUIPMENT

By virtue of the authority vested in me, as Commandant, United States Coast Guard, by R. S. 4405, 4491, as amended; 46 U. S. C. 375, 489; and section 101 of Reorganization Plan No. 3 of 1946 (11 F. R. 7875, 60 Stat. 1097) as well as the additional authorities cited with specific items below, the following approvals of

equipment are prescribed and shall be effective for a period of five years from date of publication in the FEDERAL REGISTER unless sooner canceled or suspended by proper authority:

BUOYANT CUSHIONS, KAPOK, STANDARD

NOTE: Cushions are for use on motorboats of classes A, 1, or 2 not carrying passengers for hire.

Approval No. 160.007/77/0, Standard kapok buoyant cushion, U. S. C. G. Specification 160.007, manufactured by Art-

Mar Manufacturing Co., 1073 East 54th St., Indianapolis, Ind.

(54 Stat. 164, 166; 46 U. S. C. 526e, 526p; 46 CFR 25.4-1, 160.007)

BUOYANT CUSHIONS, NON-STANDARD

NOTE: Cushions are for use on motorboats of classes A, 1, or 2 not carrying passengers for hire.

Approval No. 160.008/401/0, 14" x 18" x 2" rectangular buoyant cushion, 22 oz.

¹ Filed as a part of the original document.

kapok, Dwg. No. 103 dated December 16, 1948, U. S. C. G. Specification 160.008, manufactured by Nappe-Smith Manufacturing Co., Southard Avenue, Farmingdale, N. J.

Approval No. 160.008/402/0, 15" x 15" x 2" rectangular buoyant cushion, 20 oz. kapok, plastic film cover, plastic straps, heat sealed seams, stitched ending seam, Dwg. No. C-102 rev. December 21, 1948, and Dwg. No. A-211 dated December 21, 1948, manufactured by The American Pad and Textile Co., Greenfield, Ohio.

Approval No. 160.008/403/0, 15" x 15" x 2" rectangular buoyant cushion, 20 oz. kapok, plastic film cover and straps, stitched seams, specification dated December 28, 1948, manufactured by Art-Mar Manufacturing Co., 1073 East 54th St., Indianapolis, Ind.

Approval No. 160.008/404/0, 15" x 15" x 2" rectangular buoyant cushion, 20 oz. kapok, flexible plastic film cover, extruded plastic straps, heat sealed seams, specifications contained in manufacturer's letter dated January 11, 1949, manufactured by Plasticronics, Inc., 54 Greene Street, New York 13, N. Y.

(54 Stat. 164, 166; 46 U. S. C. 526e, 526p; 46 CFR 25.4-1, 160.008)

DAVITS, LIFEBOAT

Approval No. 160.032/103/0, Mechanical davit, Type 24-40, straight boom sheath screw, approved for maximum working load of 11,500 pounds per set (5750 pounds per arm) using six part falls, identified by Arrangement Dwg. No. DB-201 dated April 20, 1948, and revised November 3, 1948, manufactured by the Marine Safety Equipment Corporation, Point Pleasant, N. J.

(R. S. 4417a, 4426, 4481, 4488, 49 Stat. 1544, 54 Stat. 346, and sec. 5 (e) 55 Stat. 244, as amended; 46 U. S. C. 367, 391a, 404, 474, 481, 1333, 50 U. S. C. 1275; 46 CFR 37.1-4, 59.3, 60.21, 76.15, 94.14, 113.23)

LIFEBOATS

Approval No. 160.035/178/1, 16.0' x 5.5' x 2.37' steel, oar-propelled lifeboat, 12-person capacity, identified by Construction and Arrangement Dwg. No. 16-1 dated January 31, 1947, and revised October 6, 1947, submitted by Marine Safety Equipment Corporation, Point Pleasant, N. J. (Supersedes Approval No. 160.035/178/0 published in the FEDERAL REGISTER November 19, 1947.)

Approval No. 160.035/232/0, 15.0' x 5.42' x 2.25' wood, oar-propelled lifeboat, 10-person capacity, for inland waters other than the Great Lakes, identified by Dwg. No. 148 L/B-1 dated September 20, 1948, submitted by Geo. W. Kneass Co., Eighteenth and Illinois Streets, San Francisco 7, Calif.

Approval No. 160.035/237/0, 31.0' x 10.5' x 4.33' steel, hand-propelled lifeboat, 82-person capacity, identified by Construction and Arrangement Dwg. No. 3235 dated August 20, 1948, manufactured by Wehn Davit and Boat Division of American Steel & Copper Industries, Inc., Perth Amboy, N. J.

(R. S. 4417a, 4426, 4481, 4488, 4492, 35 Stat. 428, 49 Stat. 1544, 54 Stat. 346, and

sec. 5 (e), 55 Stat. 244, as amended; 46 U. S. C. 367, 391a, 396, 404, 474, 481, 490, 1333, 50 U. S. C. 1275; 46 CFR 37.1-1, 59.13, 76.16, 94.15, 113.10)

FLASHLIGHTS, ELECTRIC, HAND

Approval No. 161.008/5/0, No. 1918 waterproof flashlight, Type I, Size 2 (2-cell) identified by Assembly Dwg. No. F-896-3C dated September 27, 1948, and revised October 6, 1948, manufactured by Bright Star Battery Co., Clifton, N. J.

Approval No. 161.008/6/0, No. 1925 waterproof flashlight, Type I, Size 3 (3-cell) identified by Assembly Dwg. No. F-896-3C dated September 27, 1948, and revised October 6, 1948, manufactured by Bright Star Battery Co., Clifton, N. J.

Approval No. 161.008/7/0, No. 1917 explosion-proof flashlight, Type II, Size 2 (2-cell) identified by Assembly Dwg. No. F-894-3C dated September 24, 1948, and revised October 5, 1948, manufactured by Bright Star Battery Co., Clifton, N. J.

Approval No. 161.008/8/0, No. 1924 explosion-proof flashlight, Type II, Size 3 (3-cell) identified by Assembly Dwg. No. F-894-3C dated September 24, 1948, and revised October 5, 1948, manufactured by Bright Star Battery Co., Clifton, N. J.

(R. S. 4417a, 4426, 49 Stat. 1544, 54 Stat. 346, and sec. 5 (e) 55 Stat. 244, as amended; 46 U. S. C. 367, 391a, 404, 1333, 50 U. S. C. 1275; 46 CFR 33.3-1, 33.3-2, 59.11, 76.14)

BOILERS, HEATING

Approval No. 162.003/78/0, Type 523 "C" bare, 30 pounds per square inch steam heating boiler, welded steel plate, Dwg. No. 38-8186, submitted by International Boiler Works Co., East Stroudsburg, Pa.

(R. S. 4417a, 4418, 4426, 4433, 4434, 49 Stat. 1544, 54 Stat. 346, and sec. 5 (e) 55 Stat. 244, as amended; 46 U. S. C. 367, 391a, 392, 404, 411, 412, 1333, 50 U. S. C. 1275; 46 CFR Part 52)

FIRE EXTINGUISHERS, PORTABLE, HAND, CARBON-DIOXIDE TYPE

Approval No. 162.005/19/0, "General Quick Aid Sno Fog Fire Guard," Model 10AK, squeeze grip valve, 10-pound carbon dioxide hand portable fire extinguisher, Assembly Dwg. No. BC-210-X, Revision A, dated September 6, 1946, Name Plate Dwg. No. CC-210-1, Revised June 27, 1947, manufactured by The General Detroit Corp. 2272 E. Jefferson, Detroit 7, Mich.

(R. S. 4417a, 4426, 4479, 4492, 49 Stat. 1544, 54 Stat. 165, 166, 346, 1028, and sec. 5 (e) 55 Stat. 244, as amended; 46 U. S. C. 367, 391a, 404, 463a, 472, 490, 526g, 526p, 1333, 50 U. S. C. 1275; 46 CFR 25.5-1, 26.3-1, 27.3-1, 34.5-1, 61.13, 77.13, 95.13, 114.15)

STRUCTURAL INSULATION

Approval No. 164.007/26/0, "Fiberglas Insulation PF-CG" glass wool type structural insulation identical to that described in National Bureau of Standards Test Report No. TG 10210-1536: FP2661 dated December 1, 1948, bats and blankets approved for use without other

insulating material to meet Class A-60 requirements in a 4-inch thickness and 6 pounds per cubic foot density, manufactured by Owens-Corning Fiberglas Corp., Toledo 1, Ohio.

(R. S. 4417a, 4426, 49 Stat. 1384, 1544, 54 Stat. 346, 1028, and sec. 5 (e), 55 Stat. 244, as amended, 46 U. S. C. 367, 369, 391a, 404, 463a, 1333, 50 U. S. C. 1275; 46 CFR Part 144)

Dated: February 1, 1949.

[SEAL] **MERLIN O'NEILL,**
Rear Admiral, U. S. Coast Guard,
Acting Commandant.

[F. R. Doc. 49-913; Filed, Feb. 7, 1949;
8:54 a. m.]

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

ALASKA

NOTICE FOR FILING OBJECTIONS TO ORDER WITHDRAWING CERTAIN PUBLIC LAND AS ADMINISTRATIVE SITE FOR BUREAU OF LAND MANAGEMENT AND PARTIALLY REVOKING EXECUTIVE ORDER NO. 8102 OF APRIL 29, 1939¹

For a period of 60 days from the date of publication of the above entitled order, persons having cause to object to the terms thereof may present their objections to the Secretary of the Interior. Such objections should be in writing, should be addressed to the Secretary of the Interior, and should be filed in duplicate in the Department of the Interior, Washington 25, D. C. In case any objection is filed and the nature of the opposition is such as to warrant it, a public hearing will be held at a convenient time and place, which will be announced, where opponents to the order may state their views and where the proponents of the order can explain its purpose, intent, and extent. Should any objection be filed, whether or not a hearing is held, notice of the determination by the Secretary as to whether the order should be rescinded, modified or let stand will be given to all interested parties of record and the general public.

C. GIRARD DAVIDSON,
Assistant Secretary of the Interior

JANUARY 31, 1949.

[F. R. Doc. 49-911; Filed, Feb. 7, 1949;
8:54 a. m.]

CIVIL AERONAUTICS BOARD

[Docket No. 8428]

MID-CONTINENT AIRLINES, INC., THROUGH
SERVICE PROCEEDING

NOTICE OF POSTPONEMENT OF HEARING

In the matter of a proceeding to determine whether the public convenience and necessity require the establishment of through air transportation service by interchange arrangements or otherwise between Mid-Continent Airlines, Inc., and Eastern Air Lines, Inc., at St. Louis,

¹ See F. R. Doc. 49-910, Title 43, Chapter I, Appendix, *supra*.

Mo., or between Mid-Continent Airlines, Inc., Chicago and Southern Airlines, Inc., and Eastern Air Lines, Inc., or Delta Air Lines, Inc., at Memphis, Tenn., and between Braniff Airways, Inc., and Eastern Air Lines, Inc., or Delta Air Lines, Inc., at Memphis, Tenn.

Notice is hereby given that the hearing in the above-entitled proceeding, now assigned to be heard February 9, 1949, is postponed to a date to be set by future notice of the Board.

Dated at Washington, D. C., February 3, 1949.

By the Civil Aeronautics Board.

[SEAL] M. C. MULLIGAN,
Secretary.

[F. R. Doc. 49-905; Filed, Feb. 7, 1949;
8:51 a. m.]

[Docket No. 3500]

NATIONAL AIRLINES, INC., NATIONAL ROUTE
TRANSFER INVESTIGATION

NOTICE OF HEARING

In the matter of the investigation of the transfers of the routes and properties of National Airlines, Inc.

Notice is hereby given, pursuant to the provisions of the Civil Aeronautics Act of 1938, as amended, that a public hearing in the above-entitled matter will be held on February 14, 1949, at 10:00 a. m. (e. s. t.) in Conference Room No. 105, Archives Building, Pennsylvania Avenue between 7th and 9th Streets, N. W., Washington, D. C., before Chief Examiner Francis W. Brown and Examiner James S. Keith.

Dated at Washington, D. C., February 1, 1949.

By the Civil Aeronautics Board.

[SEAL] M. C. MULLIGAN,
Secretary.

[F. R. Doc. 49-904; Filed, Feb. 7, 1949;
8:51 a. m.]

[Docket No. SA-182]

ACCIDENT AT HAVANA, CUBA

NOTICE OF HEARING

In the matter of investigation of accident involving aircraft of United States Registry NC-90665, which occurred at Havana, Cuba, on December 9, 1948.

Notice is hereby given, pursuant to the Civil Aeronautics Act of 1938, as amended, particularly section 702 of said act, in the above-entitled proceeding that hearing is hereby assigned to be held on Tuesday, February 15, 1949, at 9:30 a. m. (local time) in the Commission Room, City Hall, LeJuene Road at Coral Way, Coral Gables, Florida.

Dated at Washington, D. C., February 2, 1949.

[SEAL] ROBERT W. CHRISP,
Presiding Officer

[F. R. Doc. 49-907; Filed, Feb. 7, 1949;
8:53 a. m.]

[Docket No. SA-183]

ACCIDENT EN ROUTE TO SAN JUAN, PUERTO
RICO-MIAMI, FLA.

NOTICE OF HEARING

In the matter of investigation involving missing aircraft of United States Registry NC-16002, which occurred on December 28, 1948, en Route to San Juan, Puerto Rico-Miami, Florida.

Notice is hereby given, pursuant to the Civil Aeronautics Act of 1938, as amended, particularly section 702 of said act, in the above-entitled proceeding that hearing is hereby assigned to be held on Friday, February 18, 1949, at 9:30 a. m. (local time) in the Commission Room, City Hall, LeJuene Road at Coral Way, Coral Gables, Florida.

Dated at Washington, D. C., February 2, 1949.

[SEAL] ROBERT W. CHRISP,
Presiding Officer.

[F. R. Doc. 49-908; Filed, Feb. 7, 1949;
8:53 a. m.]

[Docket No. SA-184]

ACCIDENT NEAR BRISTOL, TENN.

NOTICE OF HEARING

In the matter of investigation of accident involving aircraft of United States Registry NC-37468 which occurred near Tri-City Airport, Bristol, Tennessee, on December 28, 1948.

Notice is hereby given, pursuant to the Civil Aeronautics Act of 1938, as amended, particularly section 702 of said act, in the above-entitled proceeding that hearing is hereby assigned to be held on Thursday, February 10, 1949, at 9:30 a. m. (local time) in the Federal Court Room, Second Floor Post Office Building, Corner 5th and Liberty, Winston-Salem, North Carolina.

Dated at Washington, D. C., February 2, 1949.

[SEAL] ROBERT W. CHRISP,
Presiding Officer.

[F. R. Doc. 49-909; Filed, Feb. 7, 1949;
8:53 a. m.]

FEDERAL POWER COMMISSION

[Docket No. E-6189]

DUKE POWER CO.

NOTICE OF ORDER AUTHORIZING ISSUANCE OF
BONDS

FEBRUARY 3, 1949.

Notice is hereby given that, on February 1, 1949, the Federal Power Commission issued its order entered February 1, 1949, authorizing issuance of bonds in the above-designated matter.

[SEAL] LEON M. FUQUAY,
Secretary.

[F. R. Doc. 49-898; Filed, Feb. 7, 1949;
8:50 a. m.]

[Docket Nos. G-645, G-1133]

COLORADO-WYOMING GAS CO.

ORDER CONSOLIDATING PROCEEDINGS AND
FIXING DATE OF HEARING

On June 21, 1945, Colorado-Wyoming Gas Company (Applicant) a Delaware corporation with its principal place of business at Denver, Colorado, filed an application, at Docket No. G-645, as supplemented on August 3, 1945, February 11, 1946, December 9, 1946, December 22, 1947, September 30, 1948, and January 11, 1949, for a certificate of public convenience and necessity, pursuant to section 7 of the Natural Gas Act, as amended, authorizing the acquisition, construction and operation of certain natural-gas facilities, subject to the jurisdiction of the Commission, as fully described in such application on file with the Commission and open to public inspection.

On September 30, 1948, Applicant filed an application, at Docket No. G-1133, as supplemented on November 1, 1948, December 3, 1948, and January 11, 1949, for a certificate of public convenience and necessity, pursuant to section 7 of the Natural Gas Act, as amended, authorizing the construction and operation of certain natural-gas facilities, subject to the jurisdiction of the Commission. Additionally, Applicant seeks permission and approval, pursuant to section 7 (b) of the Natural Gas Act, to abandon the natural-gas facilities applied for at Docket No. G-645¹ together with other natural-gas facilities, subject to the jurisdiction of the Commission. All such facilities are fully described in the application on file with the Commission and open to public inspection.

These proceedings should be consolidated for purpose of hearing, and are proper for disposition under the provisions of § 1.32 (b) of the Commission's rules of practice and procedure, Applicant having requested that these two applications be heard under the shortened procedure provided by the aforesaid rule for non-contested proceedings, and no request to be heard, protest or petitions having been filed subsequent to the giving of due notice of the filing of the applications, including publication in the FEDERAL REGISTER, at Docket No. G-645, on November 6, 1945 (10 F. R. 13694), and at Docket No. G-1133, on October 26, 1948 (13 F. R. 6274).

The Commission orders:

(A) The above-docketed proceedings be and they are hereby consolidated for purposes of hearing.

(B) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Power Commission by sections 7 and 15 of the Natural Gas Act, as amended, and the Commission's rules of practice and procedure, a hearing be held on February 17, 1949, at 9:30 a. m. (e. s. t.), in the Hearing Room of the Federal Power Commission,

¹On July 17 and November 9, 1945, temporary authorization was granted by the Commission to acquire, construct and operate the facilities involved at Docket No. G-645.

1800-Pennsylvania Avenue NW., Washington, D. C., concerning the matters involved and the issues presented by such applications; *Provided, however* That the Commission may, after a non-contested hearing, forthwith dispose of the proceedings pursuant to the provisions of § 1.32 (b) of the Commission's rules of practice and procedure.

(C) Interested State commissions may participate as provided by §§ 1.8 and 1.37 (f) of the said rules of practice and procedure.

Date of issuance: February 1, 1949.

By the Commission.

[SEAL] LEON M. FUQUAY,
Secretary.

[F. R. Doc. 49-895; Filed, Feb. 7, 1949;
8:48 a. m.]

[Docket Nos. G-884, G-887]

SOUTHERN NATURAL GAS CO. AND ATLANTIC
GULF GAS CO.

ORDER CONSOLIDATING PROCEEDINGS AND
FIXING DATE OF HEARING

FEBRUARY 1, 1949.

On March 31, 1947, Southern Natural Gas Company (Southern Natural) a Delaware corporation, with its principal place of business at Birmingham, Alabama, at Docket No. G-884, filed an application, amended on May 1, 1947, for a certificate of public convenience and necessity, pursuant to section 7 of the Natural Gas Act, as amended, authorizing the construction and operation of certain natural-gas facilities, subject to the jurisdiction of the Commission, all as more fully described in such application, as amended, on file with the Commission and open to public inspection, public notice thereof having been given, including publication in the FEDERAL REGISTER on April 24, 1947 (12 F. R. 2639) and on May 13, 1947 (12 F. R. 3130).

On April 14, 1947, Atlantic Gulf Gas Company (Atlantic Gulf) a Delaware corporation, with its principal place of business at Shreveport, Louisiana, at Docket No. G-887, filed an application, amended on June 5, 1947, for a certificate of public convenience and necessity, pursuant to section 7 of the Natural Gas Act, as amended, authorizing the construction and operation of certain natural-gas facilities, subject to the jurisdiction of the Commission, all as more fully described in such application, as amended, on file with the Commission and open to public inspection, public notice thereof having been given, including publication in the FEDERAL REGISTER on June 12, 1947 (12 F. R. 3844).

On October 23, 1947, each of the above-named Applicants was requested to file with the Commission data and information in support of each representative application, together with advice as to when each would be ready to proceed with a hearing.

On April 13, 1948, on its own motion, the Commission, by order, consolidated the above-docketed applications for purposes of hearing, and fixed a hearing date for June 14, 1948.

On June 4 and June 7, 1948, Atlantic Gulf and Southern Natural, respectively, filed motions to postpone such hearing, and such motions were granted by the Commission.

On July 30, 1948, the Commission repeated its request to each Applicant to file the supporting data and information, and to state when each would be ready to proceed with a hearing.

To date, neither Applicant has filed data, information or exhibits in support of the respective applications, or indicated a readiness to proceed with a hearing.

The Commission finds:

(a) Good cause exists for consolidating the above applications for purposes of hearing.

(b) No further delay in the holding of a hearing on the above-docketed applications seems appropriate.

The Commission orders:

(A) The above-docketed proceedings be and they are hereby consolidated for purposes of hearing.

(B) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Power Commission by sections 7 and 15 of the Natural Gas Act, as amended, and the Commission's rules of practice and procedure, a public hearing be held commencing on May 16, 1949, at 10:00 a. m. (e. s. t.) in the Hearing Room of the Federal Power Commission, 1800 Pennsylvania Avenue, NW., Washington, D. C., concerning the matters involved and the issues presented by the applications, as amended, and other pleadings in these proceedings.

(C) Each Applicant shall file with the Commission, in the manner and form prescribed by the Commission's rules of practice and procedure, at least 30 days prior to the date hereinbefore fixed for hearing, all the data, information and exhibits it deems requisite in support of its application.

(D) Each Applicant shall be prepared to fully prosecute its application on the date hereinbefore fixed for hearing, else its application shall be dismissed for lack of prosecution.

(E) Interested State commissions may participate as provided by §§ 1.8 and 1.37 (f) of the Commission's rules of practice and procedure.

Date of issuance: February 2, 1949.

By the Commission.

[SEAL] LEON M. FUQUAY,
Secretary.

[F. R. Doc. 49-896; Filed, Feb. 7, 1949;
8:48 a. m.]

[Docket No. G-889]

EAST TENNESSEE NATURAL GAS CO.

NOTICE OF ORDER MODIFYING ORDER ISSUING
CERTIFICATE OF PUBLIC CONVENIENCE AND
NECESSITY

FEBRUARY 3, 1949.

Notice is hereby given that, on February 2, 1949, the Federal Power Commission issued its order entered February 1, 1949, modifying order (published in the FEDERAL REGISTER on February 6, 1948, Vol. 13, No. 26, P. 561) issuing certificate

of public convenience and necessity in the above-designated matter.

[SEAL] LEON M. FUQUAY,
Secretary.

[F. R. Doc. 49-899; Filed, Feb. 7, 1949;
8:50 a. m.]

[Docket No. G-911]

TENNESSEE GAS TRANSMISSION CO.

ORDER FIXING DATE OF HEARING

On December 27, 1948, Tennessee Gas Transmission Company (Applicant), a Delaware corporation having its principal office at Houston, Texas, filed an application for a certificate of public convenience and necessity, pursuant to section 7 of the Natural Gas Act, as amended, authorizing the construction and operation of certain natural gas facilities subject to the jurisdiction of the Commission as more fully described in such application on file with the Commission and open to public inspection.

The Commission finds: This proceeding is a proper one for disposition under the provisions of § 1.32 (b) of the Commission's rules of practice and procedure, Applicant having requested that its application be heard under the shortened procedure provided by the aforesaid rule for non-contested proceedings, and no request to be heard, protest or petition having been filed subsequent to the giving of due notice of the filing of the application, including publication in the FEDERAL REGISTER on January 14, 1949 (14 F. R. 207).

The Commission orders:

(A) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Power Commission by sections 7 and 15 of the Natural Gas Act, as amended, and the Commission's rules of practice and procedure, a hearing be held on February 23, 1949, at 9:30 a. m. (e. s. t.), in the Hearing Room of the Federal Power Commission, 1800 Pennsylvania Avenue, NW., Washington, D. C., concerning the matter involved and the issues presented by such application; *Provided, however*, That the Commission may, after a non-contested hearing, forthwith dispose of the proceeding pursuant to the provisions of § 1.32 (b) of the Commission's rules of practice and procedure.

(B) Interested State commissions may participate as provided by §§ 1.8 and 1.37 (f) of the said rules of practice and procedure.

Date of issuance: February 2, 1949.

By the Commission.

[SEAL] LEON M. FUQUAY,
Secretary.

[F. R. Doc. 49-897; Filed, Feb. 7, 1949;
8:48 a. m.]

[Docket No. G-1155]

BALTIC OPERATING CO.

NOTICE OF FINDINGS AND ORDER AUTHORIZING
AND APPROVING ABANDONMENT OF FACILITIES

FEBRUARY 3, 1949.

Notice is hereby given that, on February 2, 1949, the Federal Power Commis-

sion issued its findings and order entered February 1, 1949, authorizing and approving abandonment of facilities in the above-designated matter.

[SEAL] LEON M. FUQUAY,
Secretary.

[F. R. Doc. 49-900; Filed, Feb. 7, 1949;
8:50 a. m.]

[Docket No. G-1165]

WISCONSIN SOUTHERN GAS CO.

NOTICE OF APPLICATION

FEBRUARY 2, 1949.

Notice is hereby given that on January 25, 1949, Wisconsin Southern Gas Company (Applicant) a Wisconsin corporation having its principal office at Burlington, Wisconsin, filed an application for:

(a) A certificate of public convenience and necessity, pursuant to section 7 of the Natural Gas Act, as amended, authorizing the acquisition, construction and operation of certain natural-gas facilities, as hereinafter more particularly described; or, in the alternative, a finding and determination that such facilities are not subject to the jurisdiction of the Commission; and

(b) An order by the Commission, under section 7 (a) of the Natural Gas Act, requiring Natural Gas Pipeline Company of America to extend its facilities, to establish connection with the facilities which Applicant proposes to construct and acquire, and to supply Applicant with such quantities of natural gas as Applicant may be entitled to receive under rate schedules already filed by Natural Gas Pipeline Company of America with the Commission.

Applicant seeks authorization to acquire from Wisconsin Gas & Electric Company, among other things, the so-called Genoa City line, consisting of 132,774 feet of 4-inch pipeline, and extending from the west line of the Town of Pleasant Prairie, Kenosha County, Wisconsin to the Village of Genoa City, Walworth County, Wisconsin.

Applicant proposes to connect the Genoa City line, either through the construction of approximately 2.32 miles of 4-inch pipeline extending from Applicant's present facilities at Pell Lake eastwardly to Genoa City, or through the construction of approximately 1.65 miles of 6-inch pipeline extending northwardly from the new point of connection with the facilities of Natural Gas Pipeline Company of America on the Wisconsin-Illinois State line, to the Genoa City line, with appurtenant metering and regulating equipment at whatever point the connection is made.

Applicant states that it proposes to serve natural gas to the approximately 1,350 customers now served with manufactured gas at the rates it now charges its other natural-gas customers. Applicant states that it has the requisite authority from the Wisconsin Public Service Commission to make the change-over; and to acquire, construct and operate the above-described facilities.

The purchase price of the Genoa City line is \$180,000, plus the cost of any addi-

tions subsequent to December 1, 1946. Applicant estimates the cost of the six-inch line, together with the regulating and metering station, at \$29,999. The cost of the four-inch line from Pell Lake, together with the regulating and metering station is estimated at \$28,631. Applicant has secured a firm commitment for a short-term bank loan of \$200,000, to be refinanced through first mortgage bonds and serial notes.

Any interested State commission is requested to notify the Federal Power Commission whether the application should be considered under the cooperative provisions of § 1.37 of the Commission's rules of practice and procedure and, if so, to advise the Federal Power Commission as to the nature of its interest in the matter and whether it desires a conference, the creation of a board, or a joint or concurrent hearing, together with reasons for such a request.

The application of Wisconsin Southern Gas Company is on file with the Commission and open to public inspection. Any person desiring to be heard or to make any protest with reference to the application shall file with the Federal Power Commission, Washington, D. C., not later than 15 days from the date of publication of this notice in the FEDERAL REGISTER, a petition to intervene or protest. Such petition or protest shall conform to the requirements of § 1.8 or 1.10, whichever is applicable, of the rules of practice and procedure.

[SEAL] LEON M. FUQUAY,
Secretary,

[F. R. Doc. 49-903; Filed, Feb. 7, 1949;
8:51 a. m.]

[Project No. 400]

WESTERN COLORADO POWER CO.

NOTICE OF ORDER AUTHORIZING AMENDMENT OF LICENSE (MAJOR)

FEBRUARY 3, 1949.

Notice is hereby given that, on February 1, 1949, the Federal Power Commission issued its order entered February 1, 1949, authorizing amendment of license (major) in the above-designated matter.

[SEAL] LEON M. FUQUAY,
Secretary.

[F. R. Doc. 49-901; Filed, Feb. 7, 1949;
8:50 a. m.]

[Project No. 1502]

CLIFF RICHMOND LUMBER CO.

NOTICE OF ORDER AUTHORIZING ISSUANCE OF NEW LICENSE (MAJOR)

FEBRUARY 3, 1949.

Notice is hereby given that, on February 2, 1949, the Federal Power Commission issued its order entered February 1, 1949, authorizing issuance of new license (major) in the above-designated matter.

[SEAL] LEON M. FUQUAY,
Secretary.

[F. R. Doc. 49-902; Filed, Feb. 7, 1949;
8:51 a. m.]

[Project No. 1935]

CITY OF LOS ANGELES, CALIF., AND ITS
DEPARTMENT OF WATER AND POWER

NOTICE OF APPLICATION FOR PRELIMINARY PERMIT

FEBRUARY 1, 1949.

Public notice is hereby given that the City of Los Angeles, California, and its Department of Water and Power have made application under the Federal Power Act (16 U. S. C. 791a-825r) for preliminary permit for a period of 36 months for proposed hydroelectric Project No. 1995 to be located on Kings River and Middle and South Forks of Kings River in Fresno County, California. The proposed project would affect lands of the United States within Sierra and Sequoia National Forests and would consist of Tehipite Reservoir formed by a dam on the Middle Fork of Kings River; Cedar Grove Reservoir formed by a dam on the South Fork of Kings River; Junction Reservoir formed by a dam on Kings River near the junction of the Middle and South Forks; Kings River Power Plant No. 4 North and Kings River Power Plant No. 4 South on the shore of and discharging into Junction Reservoir water from Tehipite and Cedar Grove Reservoirs, respectively. Kings River Power Plant No. 5 located on Kings River about 4 miles above the mouth of the North Fork and utilizing water from Junction Reservoir; conduits with aggregate length of about 27.4 miles consisting principally of tunnels and penstocks connecting the reservoirs with the powerhouses, the total installed capacity of which would be 197,700 horsepower; and appurtenant facilities. The energy generated by the proposed project would be for the use of the City of Los Angeles and its inhabitants for the purposes of heat, light and power.

A preliminary permit, if issued, shall be for the sole purpose of maintaining priority of application for a license under the Federal Power Act to enable the applicant herein to make examinations and surveys, to prepare maps, plans, and estimates, and to make financial arrangements required for the filing of an application for license under the act. A preliminary permit, if issued, will not authorize construction of the proposed project.

Any protest against approval of this application or request for hearing thereon, with the reasons for such protest or request, and the name and address of the party or parties so protesting or requesting, should be submitted on or before March 18, 1949, to the Federal Power Commission, Washington 25, D. C.

[SEAL] LEON M. FUQUAY,
Secretary.

[F. R. Doc. 49-894; Filed, Feb. 7, 1949;
8:48 a. m.]

SECURITIES AND EXCHANGE COMMISSION

[File No. 70-2048]

PENNSYLVANIA ELECTRIC CO. ET AL.

NOTICE OF FILING

At a regular session of the Securities and Exchange Commission, held at its,

office in the city of Washington, D. C., on the 2d day of February 1949.

In the Matter of Pennsylvania Electric Company, Associated Electric Company, General Public Utilities Corporation, File No. 70-2048.

Notice is hereby given that General Public Utilities Corporation ("GPU") a registered holding company, its subsidiary, Associated Electric Company ("Aelec") also a registered holding company, and the latter's subsidiary, Pennsylvania Electric Company ("Penelec"), have filed, pursuant to the Public Utility Holding Company Act of 1935, a joint application - declaration. Applicants-declarants have designated section 6 (b), 9 (a) 10 and 12 (b) of the act as applicable to the proposed transactions.

Notice is further given that any interested person may, not later than February 16, 1949, at 5:30 p. m., e. s. t., request the Commission in writing that a hearing be held on such matter, stating the reasons for such request, the nature of his interest, and the issues of fact or law raised by said joint application-declaration which he desires to controvert, or may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, 425 Second Street NW., Washington 25, D. C. At any time after February 16, 1949 said joint application-declaration, as filed or as amended, may be granted and permitted to become effective as provided in Rule U-23 of the rules and regulations promulgated under the act or the Commission may exempt such transactions as provided in Rules U-20 (a) and U-100 thereof.

All interested persons are referred to said joint application-declaration which is on file in the office of this Commission for a statement of the transactions therein proposed, which are summarized as follows:

GPU will make a cash capital contribution of \$1,200,000 to Aelec. Penelec will issue and sell 60,000 shares of its \$20 par value common stock to Aelec for an aggregate consideration of \$1,200,000 in cash. The proceeds from the sale of the stock will be applied to the general construction program of Penelec.

Applicants-declarants state that the Pennsylvania Public Utility Commission has jurisdiction over the issue and sale by Penelec of the 60,000 shares of its common stock.

Applicants-declarants request that the Commission enter its order at the earliest date practicable.

By the Commission.

[SEAL] ORVAL L. DuBOIS,
Secretary.

[F. R. Doc. 49-891; Filed, Feb. 7, 1949;
8:48 a. m.]

[File No. 7-1091]

CLEVELAND STOCK EXCHANGE AND E. I. DU
PONT DE NEMOURS & Co.

NOTICE OF APPLICATION FOR UNLISTED
TRADING PRIVILEGES, AND OF OPPORTUNITY
FOR HEARING

At a regular session of the Securities
and Exchange Commission, held at its

office in the city of Washington, D. C., on the 2d day of February A. D. 1949.

The Cleveland Stock Exchange, pursuant to section 12 (f) (2) of the Securities Exchange Act of 1934 and Rule X-12F-1 thereunder, has made application for unlisted trading privileges in the Common Stock, \$20.00 Par Value, of E. I. du Pont de Nemours & Company, a security listed and registered on the New York Stock Exchange. Rule X-12F-1 provides that the applicant shall furnish a copy of the application to the issuer and to every exchange on which the security is listed or already admitted to unlisted trading privileges. The application is available for public inspection at the Commission's principal office in Washington, D. C.

Notice is hereby given that, upon request of any interested person received prior to March 1, 1949, the Commission will set this matter down for hearing. In addition, any interested person may submit his views or any additional facts bearing on this application by means of a letter addressed to the Secretary of the Securities and Exchange Commission, Washington, D. C. If no one requests a hearing on this matter, this application will be determined by order of the Commission on the basis of the facts stated in the application, and other information contained in the official file of the Commission pertaining to this matter.

By the Commission.

[SEAL] ORVAL L. DuBOIS,
Secretary.

[F. R. Doc. 49-889; Filed, Feb. 7, 1949;
8:47 a. m.]

[File No. 70-1837]

NORTH AMERICAN CO. AND UNION ELECTRIC
CO. OF MISSOURI

ORDER POSTPONING HEARING

At a regular session of the Securities and Exchange Commission, held at its office in the city of Washington, D. C., on the 1st day of February 1949.

The North American Company ("North American") a registered holding company, and its subsidiary, Union Electric Company of Missouri ("Union") a registered holding company and an electric utility company, having filed a joint application and declaration and amendments thereto pursuant to the applicable provisions of the Public Utility Holding Company Act of 1935 and the rules and regulations promulgated thereunder regarding the proposed issue and sale by Union to North American of 367,500 additional shares of its common stock for an aggregate consideration of \$5,000,000; and

The Commission, on May 27, 1948, having issued its notice of filing and order for hearing with respect to said joint application and declaration directing that a hearing be held on July 12, 1948; and

On July 12, 1948, said hearing having been adjourned and said adjourned hearing having been postponed from time to time until February 15, 1949, at the request of applicants-declarants; and

Applicants-declarants having by letter dated January 27, 1949, requested that said adjourned hearing be again postponed from February 15, 1949 until April 19, 1949; and

It appearing appropriate to the Commission that such request for postponement should be granted and that the adjourned hearing heretofore scheduled for February 15, 1949, should be postponed until April 19, 1949;

It is ordered That the adjourned hearing in this matter heretofore scheduled for February 15, 1949, at 10:00 a. m., e. s. t., at the office of the Securities and Exchange Commission, 425 Second Street NW., Washington 25, D. C., be, and the same hereby is, postponed to April 19, 1949, at the same time and place previously designated. On such day the hearing room clerk in Room 101 will advise as to the room in which such hearing will be held.

It is further ordered, That Willis E. Monty, or any other officer or officers of this Commission designated by it for the purpose, shall preside at such hearing. The officer so designated to preside at such hearing is hereby authorized to exercise all powers granted to the Commission under section 18 (c) of the act and to a hearing officer under the Commission's rules of practice.

By the Commission.

[SEAL] ORVAL L. DuBOIS,
Secretary.

[F. R. Doc. 49-886; Filed, Feb. 7, 1949;
8:46 a. m.]

[File No. 70-1072]

CENTRAL MAINE POWER CO.

ORDER GRANTING APPLICATION

At a regular session of the Securities and Exchange Commission held at its office in the city of Washington, D. C., on the 1st day of February A. D. 1949.

Central Maine Power Company ("Central Maine") a public-utility company and a direct subsidiary of New England Public Service Company ("NEPSCO"), a registered holding company which in turn is a direct subsidiary of Northern New England Company, also a registered holding company, having filed an amended application pursuant to section 6 (b) of the Public Utility Holding Company Act of 1935 and Rule U-50 thereunder requesting an exemption from the provisions of section 6 (a) of the act and an exemption from the competitive bidding requirements of Rule U-50 with respect to the following transaction:

Central Maine proposes to issue and sell up to 286,496 shares of its common stock, \$10 par value. The stock will be offered to the common and 6% preferred stockholders of the company in accordance with their preemptive rights. NEPSCO, which holds 77.8% of the common stock of Central Maine, has advised the company that it will waive its preemptive right to purchase 219,196 shares of the proposed issue. Central Maine proposes to sell the entire issue, subject to the preemptive rights of stockholders, to an underwriter to be selected by it

after negotiations with three or more investment bankers.

Central Maine having requested that the Commission's order herein become effective upon its issuance; and

Public hearings having been held after appropriate notice, in which all interested persons were given opportunity to be heard, and the Commission having considered the record and having made and filed its findings and opinion herein; on the basis of said findings and opinion

It is ordered, That said application be, and hereby is, granted, effective forthwith, subject however to the provisions of Rule U-24 and to the following additional terms and conditions:

(1) That the proposed issuance and sale of common stock by Central Maine shall not be consummated until the results of negotiations with prospective underwriters, the price at which the stock is proposed to be sold, the fees or commissions proposed to be paid to underwriters, and the final order of the Public Utilities Commission of Maine with respect to the proposed transaction have been made a matter of record in these proceedings and a further order shall have been entered by the Commission in the light of the record so completed, which order may contain further terms and conditions as may then be deemed appropriate, jurisdiction being reserved for such purpose; and

(2) That jurisdiction be reserved with regard to the payment of all other fees and expenses incurred or to be incurred in connection with the proposed transactions.

By the Commission.

[SEAL] ORVAL L. DuBOIS,
Secretary.

[F. R. Doc. 49-890; Filed, Feb. 7, 1949;
8:47 a. m.]

[File No. 70-2009]

UNITED GAS IMPROVEMENT CO. AND
HARRISBURG GAS CO.

ORDER PERMITTING DECLARATION TO BECOME
EFFECTIVE

At a regular session of the Securities and Exchange Commission, held at its office in the city of Washington, D. C., on the 1st day of February 1949.

The United Gas Improvement Company ("UGI") a registered holding company, and its public utility subsidiary, The Harrisburg Gas Company ("Harrisburg") having filed a joint declaration pursuant to section 12 of the Public Utility Holding Company Act of 1935 and Rule U-24 promulgated thereunder with respect to the following transaction:

UGI proposes to advance to Harrisburg on open book account, from time to time on or before May 1, 1949, an amount not exceeding \$600,000, bearing interest at the rate of 2¾% annually. The proceeds of the advance, together with other funds, will be used by Harrisburg to meet the cost of its construction program to May 1, 1949 and to provide for the purchase of certain gas properties located in Cumberland County, Pennsylvania. It is stated that the acquisition of said

gas properties will be made only if and when it is approved by the Pennsylvania Public Utility Commission and, in the opinion of Harrisburg's counsel, said acquisition is not subject to this Commission's jurisdiction.

Such joint declaration having been duly filed, and notice of said filing having been duly given in the form and manner prescribed by Rule U-23 promulgated pursuant to said Act and the Commission not having received a request for hearing with respect to said joint declaration within the period specified in said notice, or otherwise, and not having ordered a hearing thereon; and

The Commission finding that no adverse findings are necessary with respect to the joint declaration, and deeming it appropriate in the public interest and in the interest of investors and consumers that said joint declaration be permitted to become effective forthwith:

It is hereby ordered, Pursuant to Rule U-23 and the applicable provisions of the act, and subject to the terms and conditions prescribed by Rule U-24, that the joint declaration be, and the same hereby is, permitted to become effective forthwith.

By the Commission.

[SEAL] ORVAL L. DuBOIS,
Secretary.

[F. R. Doc. 49-888; Filed, Feb. 7, 1949;
8:46 a. m.]

[File No. 70-2025]

ATLANTIC CITY ELECTRIC CO.

ORDER GRANTING APPLICATION

At a regular session of the Securities and Exchange Commission held at its office in the city of Washington, D. C., on the 1st day of February 1949.

Atlantic City Electric Company ("Atlantic City"), an electric utility subsidiary of American Gas and Electric Company, a registered holding company, having filed an application and amendment thereto with this Commission pursuant to the Public Utility Holding Company Act of 1935, particularly section 6 (b) thereof with respect to the following proposed transactions:

Atlantic City proposes to borrow \$850,000 equally divided between the Guaranty Trust Company of New York and the Irving Trust Company. The proposed loans will be evidenced by promissory notes maturing December 31, 1950, and will bear interest at the rate of 1½% per annum until July 11, 1949, and at the rate of 1¾% per annum from that date to maturity. The notes may be prepaid in whole or in part on ten days' notice to the banks, without premium, unless such prepayment is made from funds borrowed at a lower rate of interest, in which event a premium shall be payable in the amount of ¼ of 1% per annum of the amount being prepaid from the date of such prepayment to maturity.

On July 11, 1947, the Commission authorized the borrowing of \$2,000,000 by Atlantic City from the banks above named pursuant to a credit agreement whereby Atlantic City might borrow up

to an aggregate of \$3,600,000. Our order therein provided, however, that the remaining \$1,600,000 might be borrowed as needed and notes issued therefor, subject to the approval of the Board of Public Utility Commissioners of the State of New Jersey and this Commission. On September 15, 1948, the Commission authorized the borrowing of \$750,000 pursuant to the loan agreement, and the present application proposes the borrowing of the remaining \$850,000 provided for in the credit agreement.

The application states that the proceeds of the proposed loans will be applied in part to the payment of notes due February 7, 1949 in the amount of \$500,000 and the balance will be added to the general treasury funds of Atlantic City.

The application having been filed on December 28, 1948, and an amendment thereto having been filed on January 31, 1949 and notice of said filing having been given in the form and manner prescribed by Rule U-23 promulgated pursuant to said act, and the Commission not having received a request for hearing with respect to said application within the period specified or otherwise, and not having ordered a hearing thereon; and

The Commission observing no basis for adverse findings with respect to the application, as amended, under the applicable provisions of the act, and the Commission finding that Atlantic City is entitled to an exemption from the provisions of sections 6 (a) and 7 of the act pursuant to the provisions of section 6 (b) thereof, it appearing that the issuance of the notes is solely for the purpose of financing the business of Atlantic City as a public utility, and that the Board of Public Utility Commissioners of the State of New Jersey, the State in which Atlantic City was organized and is doing business, has expressly authorized the proposed transactions; and the Commission being of the opinion that it is appropriate to grant the said application, as amended, without the imposition of terms and conditions, and also deeming it appropriate to grant applicant's request that the order herein be effective forthwith upon its issuance:

It is ordered, Pursuant to said Rule U-23 and the applicable provisions of the act, and subject to the terms and conditions prescribed by Rule U-24, that the said application, as amended, be, and the same hereby is, granted, effective forthwith.

By the Commission.

[SEAL] ORVAL L. DuBOIS,
Secretary.

[F. R. Doc. 49-887; Filed, Feb. 7, 1949;
8:46 a. m.]

[File No. 70-2026]

CINCINNATI GAS & ELECTRIC CO. AND
UNION LIGHT, HEAT AND POWER CO.

SUPPLEMENTAL ORDER RELEASING JURISDICTION AND GRANTING AMENDED APPLICATION-DECLARATION TO BECOME EFFECTIVE

At a regular session of the Securities and Exchange Commission, held at its

office in the city of Washington, D. C., on the 2d day of February 1949.

The Cincinnati Gas & Electric Company ("Cincinnati"), a subsidiary of The United Corporation, a registered holding company, and The Union Light, Heat and Power Company ("Union") a subsidiary of Cincinnati, having filed a joint application-declaration pursuant to the Public Utility Holding Company Act of 1935, particularly sections 6 (b) 7, 9, 10 and 12 thereof, with respect to the issue and sale by Union pursuant to the competitive bidding requirement of Rule U-50 of \$5,000,000 principal amount of First Mortgage Bonds and with respect to the issue and sale by Union of 20,000 shares of common stock pro rata to Union's present common stockholders, and related transactions; and

The Commission by order dated January 14, 1949 having granted and permitted to become effective the joint application-declaration with respect to the issue and sale of common stock and related transactions, and by order dated January 19, 1949 having granted and permitted to become effective the joint application-declaration with respect to the issue and sale of First Mortgage Bonds, subject to the condition, among other things, that the proposed sale of bonds shall not be consummated until the results of competitive bidding pursuant to Rule U-50 shall have been made a matter of record in this proceeding and a further order shall have been entered in the light of the record so completed; and jurisdiction having been reserved over the payment of all legal fees and expenses in connection with the proposed transactions; and

Union having, on February 2, 1949, filed a further amendment to said application-declaration in which it is stated that it has offered the bonds for sale pursuant to the competitive bidding requirements of Rule U-50 and has received the following bids:

"Bidder	Price to company (percent)	Interest rate (percent)	Cost to company
Halsey, Stuart & Co., Inc.	101.69	3	2.915
Blyth & Co., Inc., and the First Boston Corp.	101.62	3	2.919
Salomon Bros. & Hutzler	101.474	3	2.926
Merrill Lynch, Pierce, Fenner & Beane	101.441	3	2.927
White, Weld & Co.	101.10	3	2.945
Harriman Ripley & Co., Inc.	101.00	3	2.95
Equitable Securities Corp.	100.95	3	2.952
W. E. Hutton & Co.	100.5915	3	2.97
Wood, Struthers & Co.	100.551	3	2.972

The amendment further stating that Union has accepted the bid of Halsey Stuart & Co., Inc., for the bonds as set forth above and that the bonds will be offered for sale to the public at a price of 102.39% of the principal amount thereof, resulting in an underwriter's spread of 0.70%, and

The legal fees and expenses proposed to be incurred in connection with the proposed transactions having been estimated as follows:

Peck, Shaffer & Williams, counsel for Union:	
Bonds -----	\$11,000
Common stock -----	4,000
	\$15,000
Davis Polk Wardwell Sunderland & Kiendl, counsel for Bidders----	6,500
Total -----	21,500

The Commission having examined said amendment and having considered the record herein and finding no basis for imposing terms and conditions with respect to the price to be received for said bonds, the redemption prices thereof, the interest rate thereon and the underwriter's spread; and

It appearing that the proposed legal fees and expenses are not unreasonable and that jurisdiction with respect thereto should be released:

It is hereby ordered, That jurisdiction heretofore reserved in connection with the sale of said bonds be, and the same hereby is, released, and that the said application-declaration, as further amended, be, and the same hereby is, granted and permitted to become effective forthwith, subject to the terms and conditions prescribed in Rule U-24 of the general rules and regulations under the act.

It is further ordered, That jurisdiction heretofore reserved over the legal fees and expenses in connection with the proposed transactions be, and the same hereby is, released.

By the Commission.

[SEAL] ORVAL L. DUBOIS,
Secretary.

[F. R. Doc. 49-892; Filed, Feb. 7, 1949;
8:48 a. m.]

DEPARTMENT OF JUSTICE

Office of Alien Property

AUTHORITY: 40 Stat. 411, 55 Stat. 839, Pub. Laws 322, 671, 79th Cong., 60 Stat. 50, 925; 50 U. S. C. and Supp. App. 1, 616; E. O. 9193, July 6, 1942, 3 CFR, Cum. Supp., E. O. 9567, June 8, 1945, 3 CFR, 1945 Supp., E. O. 9788, Oct. 14, 1946, 11 F. R. 11981.

[Vesting Order 12617]

ALFRED FISCHESSESS AND GUARANTY TRUST
CO. OF NEW YORK

In re: Trust under indenture, dated March 18, 1925, between Alfred Fischesser, grantor, and the Guaranty Trust Company of New York, trustee. File No. D-28-10497-G-1.

Under the authority of the Trading With the Enemy Act, as amended, Executive Order 9193, as amended, and Executive Order 9788, and pursuant to law, after investigation, it is hereby found:

1. That Alfred E. Fischesser, Frau Louise Fischesser, Frau Martha Gottmann, Hildegard Gottmann, Christa Gottmann and Peterle Gottmann, whose last known address is Germany, are residents of Germany and nationals of a designated enemy country (Germany),

2. That the domiciliary personal representatives, heirs-at-law, next-of-kin, legatees and distributees, names unknown, of Alfred E. Fischesser, who there is reasonable cause to believe are

residents of Germany, are nationals of a designated enemy country (Germany),

3. That all right, title, interest and claim of any kind or character whatsoever of the persons identified in subparagraphs 1 and 2 hereof, and each of them, in and to and arising out of or under that certain trust indenture dated March 18, 1925, by and between Alfred Fischesser, grantor, and the Guaranty Trust Company of New York, trustee, presently being administered by the Guaranty Trust Company of New York, trustee, 140 Broadway, New York 15, New York, is property within the United States owned or controlled by, payable or deliverable to, held on behalf of or on account of, or owing to, or which is evidence of ownership or control by, the aforesaid nationals of a designated enemy country (Germany),

and it is hereby determined:

4. That to the extent that the persons named in subparagraph 1 hereof and the domiciliary personal representatives, heirs-at-law, next-of-kin, legatees and distributees, names unknown, of Alfred E. Fischesser; are not within a designated enemy country, the national interest of the United States requires that such persons be treated as nationals of a designated enemy country (Germany)

All determinations and all action required by law, including appropriate consultation and certification, having been made and taken, and, it being deemed necessary in the national interest,

There is hereby vested in the Attorney General of the United States the property described above, to be held, used, administered, liquidated, sold or otherwise dealt with in the interest of and for the benefit of the United States.

The terms "national" and "designated enemy country" as used herein shall have the meanings prescribed in section 10 of Executive Order 9193, as amended.

Executed at Washington, D. C., on January 5, 1949.

For the Attorney General.

[SEAL] DAVID L. BAZELON,
Assistant Attorney General,
Director Office of Alien Property.

[F. R. Doc. 49-914; Filed, Feb. 7, 1949;
8:54 a. m.]

[Vesting Order 12707]

LOUIS HENCH

In re: Rights of Louis Hensch under insurance contract. File No. F-28-22995-H-1.

Under the authority of the Trading With the Enemy Act, as amended, Executive Order 9193, as amended, and Executive Order 9788, and pursuant to law, after investigation, it is hereby found:

1. That Louis Hensch, whose last known address is Germany, is a resident of Germany and a national of a designated enemy country (Germany),

2. That the net proceeds due or to become due under a contract of insurance evidenced by policy No. 404023, issued by the Guardian Life Insurance

Company of America, New York, New York, to Louis Hensch, together with the right to demand, receive and collect said net proceeds, is property within the United States owned or controlled by, payable or deliverable to, held on behalf of, or on account of, or owing to, or which is evidence of ownership or control by, the aforesaid national of a designated enemy country (Germany)

and it is hereby determined:

3. That to the extent that the person named in subparagraph 1 hereof is not within a designated enemy country, the national interest of the United States requires that such person be treated as a national of a designated enemy country (Germany)

All determinations and all action required by law, including appropriate consultation and certification, having been made and taken, and, it being deemed necessary in the national interest,

There is hereby vested in the Attorney General of the United States the property described above, to be held, used, administered, liquidated, sold or otherwise dealt with in the interest of and for the benefit of the United States.

The terms "national" and "designated enemy country" as used herein shall have the meanings prescribed in section 10 of Executive Order 9193, as amended.

Executed at Washington, D. C., on January 26, 1949.

For the Attorney General.

[SEAL] DAVID L. BAZELON,
Assistant Attorney General,
Director Office of Alien Property.

[F. R. Doc. 49-915; Filed, Feb. 7, 1949; 8:54 a. m.]

[Vesting Order 12720]

KAORU NAKASHIMA

In re: Rights of Kaoru Nakashima under insurance contract. File No. F-39-4470-H-1.

Under the authority of the Trading With the Enemy Act, as amended, Executive Order 9193, as amended, and Executive Order 9788, and pursuant to law, after investigation, it is hereby found:

1. That Kaoru Nakashima, whose last known address is Japan, is a resident of Japan and a national of a designated enemy country (Japan)

2. That the net proceeds due or to become due under a contract of insurance evidenced by policy No. 9272167, issued by the New York Life Insurance Company, New York, New York, to Kaoru Nakashima, together with the right to demand, receive and collect said net proceeds,

is property within the United States owned or controlled by, payable or deliverable to, held on behalf of or on account of, or owing to, or which is evidence of ownership or control by, the aforesaid national of a designated enemy country (Japan)

and it is hereby determined:

3. That to the extent that the person named in subparagraph 1 hereof is not

within a designated enemy country, the national interest of the United States requires that such person be treated as a national of a designated enemy country (Japan)

All determinations and all action required by law, including appropriate consultation and certification, having been made and taken, and, it being deemed necessary in the national interest,

There is hereby vested in the Attorney General of the United States the property described above, to be held, used, administered, liquidated, sold or otherwise dealt with in the interest of and for the benefit of the United States.

The terms "national" and "designated enemy country" as used herein shall have the meanings prescribed in section 10 of Executive Order 9193, as amended.

Executed at Washington, D. C., on January 26, 1949.

For the Attorney General.

[SEAL] DAVID L. BAZELON,
Assistant Attorney General,
Director Office of Alien Property.

[F. R. Doc. 49-916; Filed, Feb. 7, 1949; 8:54 a. m.]

[Vesting Order 12721]

KAORU NAKASHIMA

In re: Rights of Kaoru Nakashima under insurance contract. File No. F-39-4470-H-2.

Under the authority of the Trading With the Enemy Act, as amended, Executive Order 9193, as amended, and Executive Order 9788, and pursuant to law, after investigation, it is hereby found:

1. That Kaoru Nakashima, whose last known address is Japan, is a resident of Japan and a national of a designated enemy country (Japan),

2. That the net proceeds due or to become due under a contract of insurance evidenced by policy No. 89223, issued by the West Coast Life Insurance Company, San Francisco, California, to Kaoru Nakashima, together with the right to demand, receive and collect said net proceeds, is property within the United States owned or controlled by, payable or deliverable to, held on behalf of, or on account of, or owing to, or which is evidence of ownership or control by, the aforesaid national of a designated enemy country (Japan),

and it is hereby determined:

3. That to the extent that the person named in subparagraph 1 hereof is not within a designated enemy country, the national interest of the United States requires that such person be treated as a national of a designated enemy country (Japan).

All determinations and all action required by law, including appropriate consultation and certification, having been made and taken, and, it being deemed necessary in the national interest,

There is hereby vested in the Attorney General of the United States the property described above, to be held, used, administered, liquidated, sold or otherwise dealt with in the interest of and for the benefit of the United States.

The terms "national" and "designated enemy country" as used herein shall have the meanings prescribed in section 10 of Executive Order 9193, as amended.

Executed at Washington, D. C., on January 26, 1949.

For the Attorney General.

[SEAL] DAVID L. BAZELON,
Assistant Attorney General,
Director Office of Alien Property.

[F. R. Doc. 49-917; Filed, Feb. 7, 1949; 8:55 a. m.]

[Vesting Order 12722]

SAKUTARO NAKANO

In re: Rights of Sakutaro Nakano under insurance contract. File No. D-39-16963-H-3.

Under the authority of the Trading With the Enemy Act, as amended, Executive Order 9193, as amended, and Executive Order 9788, and pursuant to law, after investigation, it is hereby found:

1. That Sakutaro Nakano, whose last known address is Japan, is a resident of Japan and a national of a designated enemy country (Japan)

2. That the net proceeds due or to become due under a contract of insurance evidenced by policy No. CWS-310160, issued by the California-Western States Life Insurance Company, Sacramento, California, to Sakutaro Nakano, together with the right to demand, receive and collect said net proceeds,

is property within the United States owned or controlled by, payable or deliverable to, held on behalf of or on account of, or owing to, or which is evidence of ownership or control by, the aforesaid national of a designated enemy country (Japan)

and it is hereby determined:

3. That to the extent that the person named in subparagraph 1 hereof is not within a designated enemy country, the national interest of the United States requires that such person be treated as a national of a designated enemy country (Japan).

All determinations and all action required by law, including appropriate consultation and certification, having been made and taken, and, it being deemed necessary in the national interest,

There is hereby vested in the Attorney General of the United States the property described above, to be held, used, administered, liquidated, sold or otherwise dealt with in the interest of and for the benefit of the United States.

The terms "national" and "designated enemy country" as used herein shall have the meanings prescribed in section 10 of Executive Order 9193, as amended.

Executed at Washington, D. C., on January 26, 1949.

For the Attorney General.

[SEAL] DAVID L. BAZELON,
Assistant Attorney General,
Director Office of Alien Property.

[F. R. Doc. 49-918; Filed, Feb. 7, 1949; 8:55 a. m.]

[Vesting Order 12723]

YOSHINOBU NISHIMURA

In re: Rights of Yoshinobu Nishimura under insurance contract. File No. D-39-11614-H-1.

Under the authority of the Trading With the Enemy Act, as amended, Executive Order 9193, as amended, and Executive Order 9788, and pursuant to law, after investigation, it is hereby found:

1. That Yoshinobu Nishimura, whose last known address is Japan, is a resident of Japan and a national of a designated enemy country (Japan),

2. That the net proceeds due or to become due under a contract of insurance evidenced by policy No. 72056, issued by the West Coast Life Insurance Company, San Francisco, California, to Yoshinobu Nishimura, together with the right to demand, receive and collect said net proceeds,

is property within the United States owned or controlled by, payable or deliverable to, held on behalf of or on account of, or owing to, or which is evidence of ownership or control by, the aforesaid national of a designated enemy country (Japan),

and it is hereby determined:

3. That to the extent that the person named in subparagraph 1 hereof is not within a designated enemy country, the national interest of the United States requires that such person be treated as a national of a designated enemy country (Japan)

All determinations and all action required by law, including appropriate consultation and certification, having been made and taken, and, it being deemed necessary in the national interest,

There is hereby vested in the Attorney General of the United States the property described above, to be held, used, administered, liquidated, sold or otherwise dealt with in the interest of and for the benefit of the United States.

The terms "national" and "designated enemy country" as used herein shall have the meanings prescribed in section 10 of Executive Order 9193, as amended.

Executed at Washington, D. C., on January 26, 1949.

For the Attorney General.

[SEAL] DAVID L. BAZELON,
Assistant Attorney General,
Director, Office of Alien Property.

[F. R. Doc. 49-919; Filed, Feb. 7, 1949; 8:55 a. m.]

KAZUO FUKUNAGA ET AL.

NOTICE OF INTENTION TO RETURN VESTED PROPERTY

Pursuant to section 32 (f) of the Trading With the Enemy Act, as amended, notice is hereby given of intention to return, on or after 30 days from the date of publication hereof the following property, located in the Treasury of the United States, Washington, D. C., sub-

ject to any increase or decrease resulting from the administration of such property prior to return and after adequate provision for taxes and conservatory expenses:

Claimant	Claim No.	Property
Kazuo Fukunaga, 1914-E Liliha St., Honolulu, T. H.	40481	\$11.34
Chimi Adachi by M. Adachi, 3733-A Manini Way, Honolulu, T. H.	40489	4.05
M. Adachi, guardian of Emily Kaye Adachi, 3733-A Manini Way, Honolulu, T. H.	40490	.31
Masayuki Adachi, guardian of Sachie Adachi, 3733-A Manini Way, Honolulu, T. H.	40491	5.00
Urayo Akita or Yasutaro Akita, P. O. Box 521, Waiakua, Oahu, T. H.	40492	1,566.61
Shozaemon Aminoto, 764 Pohukaina St., Honolulu, T. H.	40493	1.12
Shozaemon Aminoto, trustee for Masaji Aminoto, 764 Pohukaina St., Honolulu, T. H.	40494	133.65
Shigeichi Nakamoto, 4/ba Beretania Florist, 1295 S. Beretania St., Honolulu 46, T. H.	40495	749.23
Boulevard Market, c/o J. Fujimoto, K. Tanigawa, and S. Tanigawa, 1423 Dillingham Blvd., Honolulu, T. H.	40496	1,083.35
Hisa Furutomo, 277 Huala St., Honolulu, T. H.	40499	431.87
Kaoru Fukushima, 948 Akepo Lane, Honolulu 51, T. H.	40500	618.84
Philip Tsuyoshi Fukushima, 948 Akepo Lane, Honolulu, 51, T. H.	40501	47.03
M. K. Hayashi, 1447 South King St., Honolulu, T. H.	40503	1,278.11
Buntaro Higa, 1341 Young St., Honolulu, T. H.	40504	19.84
Utaro Hikichi, Ewa, Oahu, T. H.	40505	450.23
Hisako Hirai, 762 University Ave., Extended, Honolulu, T. H.	40506	163.01
Mitsue Hirano, 4720 Farmers Rd., Honolulu, T. H.	40507	27.24
Masao Ikegawa, c/o Moana Hotel, Honolulu, T. H.	40508	133.65
Teikichi Kanai, trustee for Kelsaku Kaneda, 1946 South Beretania St., Honolulu, T. H.	40511	49.81
Fukujiro Kashiwal, Pakala, Waima, Kauai, T. H.	40512	11.62
Kikuyo Kawahara, 145 South School St., Honolulu, T. H.	40514	12.95
Kikuyo Kawahara, guardian of Takiko Kawahara, 145 South School St., Honolulu, T. H.	40515	38.61
Mataichi Kinoshita, P. O. Box 134, Lanai City, T. H.	40516	77.82
Nobuo Miyaoka, a/k/a N. Miyaoka, 557 Halekauwila St., Honolulu, T. H.	40519	153.49
Takejiro Miyashita, 1711 Citron St., Honolulu, T. H.	40520	265.77
Takejiro Miyashita, trustee for Tet-suo Miyashita, 1711 Citron St., Honolulu, T. H.	40521	50.71
Shime Murayama, 1403 Emma St., Honolulu, T. H.	40522	193.14
Shime Murayama, guardian of Masato Murayama, 1403 Emma St., Honolulu, T. H.	40523	21.13
Tsugio Nakamura, 4944 Kalaniana'ole Highway, Honolulu, T. H.	40524	76.24
Yoshimasa Nakamura or Tsuma Sakai, 2018-A Pauoa Rd., Honolulu 23, T. H.	40525	603.70
Genji Nakano, P. O. Box 281, Waikele, Waipahu, Oahu, T. H.	40526	2,812.72
Junichi Namba, 3831 Manoa Rd., Honolulu, T. H.	40529	107.30
Sadae Namba, 3831 Manoa Rd., Honolulu, T. H.	40530	120.34
Asa Namba or Suematsu Namba, 3831 Manoa Rd., Honolulu, T. H.	40531	2,486.54
Ruth Kinuyo Yagawa, 717 Palani Ave., Honolulu 41, T. H.	40532	20.46
Matsutaro Oishi, 215 Puuhale Rd., Honolulu, T. H.	40533	131.73
Mrs. Rui Okumura, P. O. Box 240, Wahiawa, Oahu, T. H.	40534	82.01
Araji Onoye, 2038 Puna St., Honolulu, T. H.	40535	164.50
Araji Onoye, trustee for Tokimi Onoye, 2038 Puna St., Honolulu, T. H.	40536	112.30
David Vail Pokipala, 922 Laki St., Honolulu, T. H.	40537	42.56
Katsusuke Yamamoto, 1042 Kama Lane, Honolulu, T. H.	40538	49.70
Shigeo Sugiyama, c/o Mrs. T. Yokoyama, P. O. Box 15, Makawao, Maui, T. H.	40539	96.64
Ichiki Kanda, c/o Dorothy Ohnen, 263 Kuulei Rd., Lanikai, Oahu, T. H.	40541	150.22

Claimant	Claim No.	Property
Yoshijiro Saito, trustee for Terumi Saito, P. O. Box 492, Waipahu, Oahu, T. H.	40550	\$10.09
Kolchi Sakuma, 18 North Kukui St., Honolulu, T. H.	40581	1.10
Itsuyo Segawa or Itsuko Segawa, 1011-E Pawaia Lane, Honolulu 19, T. H.	40582	69.69
Shinajiro Shigemura, 1429 Nuuanu St., Honolulu, T. H.	40583	13.80
H. Onoye, sole owner of Shimaya Shoten, 1179 River St., Honolulu, T. H.	40584	269.67
Takeichi Shintaku, guardian of Mieko Shintaku or Mrs. Tsuneke Shintaku, guardian of Hoshiko Shintaku, 2720 Booth Rd., Honolulu, T. H.	40585	119.05
Takeichi Shintaku, guardian of Mieko Shintaku or Mrs. Tsuneke Shintaku, guardian of Hoshiko Shintaku, 2720 Booth Rd., Honolulu, T. H.	40586	118.94
Yoshiko Okimoto (nee Sueoka) or Kinu Sueoka, 561 O Rd., Damon Tract, Honolulu, T. H.	40587	110.17
Masajiro Takahashi, 410-A Liliha Court Lane, Honolulu, T. H.	40589	161.16
Minoru Takaki, P. O. Box 63, Puunene, Maui, T. H.	40590	603.03
Fukuye Tamura, 525 Lana Lane, Honolulu, T. H.	40591	676.23
Fumiko Tamura, 525 Lana Lane, Honolulu 13, T. H.	40593	11.43
Tamejiro Tanaka, 1149 Lunalilo St., Honolulu, T. H.	40596	210.95
Takiyo Tansako, 1933 Fort St., Honolulu, T. H.	40597	57.33
Kokichi Tsuyemura, 432 Kalili St., Honolulu, T. H.	40598	170.16
Kamado Ueyehara, 1924 Fern St., Honolulu, T. H.	40600	542.02
Ume Ueyetake (now Ume Nekota) and Hyolchi Nekota, 2516 South King St., Honolulu 36, T. H.	40601	2,021.24
Kita Watanabe, 1463 River St., Honolulu, T. H.	40602	212.73
Yoshitaro Yamada or Teikichi Kanai, 1946 South Beretania St., Honolulu, T. H.	40603	172.58
N. Yamanashi, 1620-B Liliha St., Honolulu, T. H.	40605	8.01
Kame Yoshimoto, 471 "R" Road, Damon Tract, Honolulu, T. H.	40606	410.81
Mitsuko Yoshioke, 1738-O Waiola St., Honolulu, T. H.	40608	821.90
Sumito Yoshitara, guardian of Sadao Yoshitara, 113-A Ohelo Lane, Honolulu, T. H.	40609	0.42
Alfaro Uyeno, P. O. Box 4, Ninole, T. H.	40610	120.01
Mitsuyo Yokota, c/o Miss Helen Kimball, Punaluu, Hauula, Oahu, T. H.	40611	163.81
Mitsuyo Yokota, c/o Miss Helen Kimball, Punaluu, Hauula, Oahu, T. H.	40612	21.49

Executed at Washington, D. C., on February 1, 1949.

For the Attorney General.

[SEAL] DAVID L. BAZELON,
Assistant Attorney General,
Director, Office of Alien Property.

[F. R. Doc. 49-879; Filed, Feb. 4, 1949; 8:58 a. m.]

[Vesting Order 12738]

MARIE KERNCAST

In re: Savings share account owned by Marie Kerncast. F-28-8732-E-1.

Under the authority of the Trading With the Enemy Act, as amended, Executive Order 9193, as amended, and Executive Order 9788, and pursuant to law, after investigation, it is hereby found:

1. That Marie Kerncast, whose last known address is Gladisstrasse 3 p. a. Frau Graz, Germany, is a resident of Germany and a national of a designated enemy country (Germany),

2. That the property described as follows: That certain debt or other obliga-

tion owing to Marie Kerngast, by Park Savings and Loan Association, 561 Greenfield Avenue, Pittsburgh 7, Pennsylvania, arising out of a savings share account; account number C-1229, entitled Marie Kerngast, maintained at the aforesaid loan association, and any and all rights to demand, enforce and collect the same,

is property within the United States owned or controlled by, payable or deliverable to, held on behalf of or on account of, or owing to, or which is evidence of ownership or control by, the aforesaid national of a designated enemy country (Germany)

and it is hereby determined:

3. That to the extent that the person named in subparagraph 1 hereof is not within a designated enemy country, the national interest of the United States requires that such person be treated as a national of a designated enemy country (Germany)

All determinations and all action required by law, including appropriate consultation and certification, having been made and taken, and, it being deemed necessary in the national interest,

There is hereby vested in the Attorney General of the United States the property described above, to be held, used, administered, liquidated, sold or otherwise dealt with in the interest of and for the benefit of the United States.

The terms "national" and "designated enemy country" as used herein shall have the meanings prescribed in section 10 of Executive Order 9193, as amended.

Executed at Washington, D. C., on January 26, 1949.

For the Attorney General.

[SEAL] DAVID L. BAZELON,
Assistant Attorney General,
Director, Office of Alien Property.

[F. R. Doc. 49-875; Filed, Feb. 4, 1949; 8:56 a. m.]

[Vesting Order 12744]

IGNAZ SINGER

In re: Stock owned by Ignaz Singer. F-28-29225-D-1.

Under the authority of the Trading With the Enemy Act, as amended, Executive Order 9193, as amended, and Executive Order 9788, and pursuant to law, after investigation, it is hereby found:

1. That Ignaz Singer, whose last known address is Weiden Oberptalz, Bavaria, Germany, is a resident of Germany and a national of a designated enemy country (Germany)

2. That the property described as follows: Twenty-five (25) shares of \$5 par value common capital stock of International Minerals & Chemical Corporation, 20 North Wacker Drive, Chicago, Illinois, a corporation organized under the laws of the State of New York, evidenced by a certificate numbered 21235 for one hundred shares of no par value stock, registered in the name of Ignaz Singer, together with all declared and unpaid dividends thereon, and any and all rights

to exchange the aforesaid (old) certificate for a (new) certificate for \$5 par value common capital stock of the aforesaid corporation,

is property within the United States owned or controlled by, payable or deliverable to, held on behalf of, or on account of, or owing to, or which is evidence of ownership or control by, the aforesaid national of a designated enemy country (Germany),

and it is hereby determined:

3. That to the extent that the person named in subparagraph 1 hereof is not within a designated enemy country, the national interest of the United States requires that such person be treated as a national of a designated enemy country (Germany)

All determinations and all action required by law, including appropriate consultation and certification, having been made and taken, and, it being deemed necessary in the national interest,

There is hereby vested in the Attorney General of the United States the property described above, to be held, used, administered, liquidated, sold or otherwise dealt with in the interest of and for the benefit of the United States.

The terms "national" and "designated enemy country" as used herein shall have the meanings prescribed in section 10 of Executive Order 9193, as amended.

Executed at Washington, D. C., on January 26, 1949.

For the Attorney General.

[SEAL] DAVID L. BAZELON,
Assistant Attorney General,
Director, Office of Alien Property.

[F. R. Doc. 49-876; Filed, Feb. 4, 1949; 8:57 a. m.]

[Vesting Order 12729]

H. TH. BOEHME, A. G.

In re: Debt owing to H. Th. Boehme, A. G., also known as H. Th. Bohme, A. G., also known as H. Th. Bohme Aktiengesellschaft. F-28-10153-C-1.

Under the authority of the Trading With the Enemy Act, as amended, Executive Order 9193, as amended, and Executive Order 9788, and pursuant to law, after investigation, it is hereby found:

1. That H. Th. Boehme, A. G., also known as H. Th. Bohme, A. G., also known as H. Th. Bohme Aktiengesellschaft, the last known address of which is 119-125 Neefestrasse, Chemnitz, Saxony, Germany, is a corporation, partnership, association or other business organization, organized under the laws of Germany, and which has or, since the effective date of Executive Order 8389, as amended, has had its principal place of business in Chemnitz, Saxony, Germany and is a national of a designated enemy country (Germany),

2. That the property described as follows: That certain debt or other obligation owing to H. Th. Boehme, A. G., also known as H. Th. Bohme, A. G., also known as H. Th. Bohme Aktiengesellschaft, by American Hyalcol Corporation, 120 Broadway, New York, New York, in

the amount of \$1,940.95, as of December 31, 1945, together with any and all accruals thereto, and any and all rights to demand, enforce and collect the same,

is property within the United States, owned or controlled by, payable or deliverable to, held on behalf of or on account of, or owing to, or which is evidence of ownership or control by, the aforesaid national of a designated enemy country (Germany),

and it is hereby determined:

3. That to the extent that the person named in subparagraph 1 hereof is not within a designated enemy country, the national interest of the United States requires that such person be treated as a national of a designated enemy country (Germany).

All determinations and all action required by law, including appropriate consultation and certification, having been made and taken, and, it being deemed necessary in the national interest,

There is hereby vested in the Attorney General of the United States the property described above, to be held, used, administered, liquidated, sold or otherwise dealt with in the interest of and for the benefit of the United States.

The terms "national" and "designated enemy country" as used herein shall have the meanings prescribed in section 10 of Executive Order 9193, as amended.

Executed at Washington, D. C., on January 26, 1949.

For the Attorney General.

[SEAL] DAVID L. BAZELON,
Assistant Attorney General,
Director, Office of Alien Property.

[F. R. Doc. 49-920; Filed, Feb. 7, 1949; 8:55 a. m.]

[Vesting Order 12731]

CHIYODA FIRE INSURANCE CO., LTD.

In re: Debt owing to Chiyoda Fire Insurance Company, Ltd. F-39-5150-C-1.

Under the authority of the Trading With the Enemy Act, as amended, Executive Order 9193, as amended, and Executive Order 9788, and pursuant to law, after investigation, it is hereby found:

1. That Chiyoda Fire Insurance Company, Ltd., the last known address of which is 1-2 2 Chome, Kyobashi Ku, Tokio, Japan, is a corporation, partnership, association or other business organization, organized under the laws of Japan, and which has or, since the effective date of Executive Order 8389, as amended, has had its principal place of business in Tokio, Japan and is a national of a designated enemy country (Japan),

2. That the property described as follows: That certain debt or other obligation owing to Chiyoda Fire Insurance Company, Ltd., by Albert Willcox & Co., Inc., 99 John Street, New York City 7, New York, in the amount of \$65.00, as of December 31, 1945, together with any and all accruals thereto, and any and all rights to demand, enforce and collect the same,

is property within the United States owned or controlled by, payable or deliverable to, held on behalf of or on account of, or owing to, or which is evidence of ownership or control by Chiyoda Fire Insurance Company, Ltd., the aforesaid national of a designated enemy country (Japan),

and it is hereby determined:

3. That to the extent that the person named in subparagraph 1 hereof is not within a designated enemy country, the national interest of the United States requires that such person be treated as a national of a designated enemy country (Japan)

All determinations and all action required by law, including appropriate consultation and certification, having been made and taken, and, it being deemed necessary in the national interest,

There is hereby vested in the Attorney General of the United States the property described above, to be held, used, administered, liquidated, sold or otherwise dealt with in the interest of and for the benefit of the United States.

The terms "national" and "designated enemy country" as used herein shall have the meanings prescribed in section 10 of Executive Order 9193, as amended.

Executed at Washington, D. C., on January 26, 1949.

For the Attorney General.

[SEAL] DAVID L. BAZELON,
Assistant Attorney General,
Director, Office of Alien Property.

[F. R. Doc. 49-921; Filed, Feb. 7, 1949;
8:55 a. m.]

[Vesting Order 12732]

MARIE CHRIST

In re: Claim of Marie Christ, also known as Ria Christ, as Marie Priester and as Ria Priester. F-28-25177-C-1.

Under the authority of the Trading With the Enemy Act, as amended, Executive Order 9193, as amended, and Executive Order 9788, and pursuant to law, after investigation, it is hereby found:

1. That Marie Christ, also known as Ria Christ, as Marie Priester and as Ria Priester, whose last known address is Wellburg a. d. Lahn, Germany, is a resident of Germany and a national of a designated enemy country (Germany)

2. That the property described as follows: That certain claim of Marie Christ, also known as Ria Christ, as Marie Priester and as Ria Priester, against the State of California and/or the Treasurer of the State of California, arising out of the collection or receipt by said Treasurer, pursuant to the provisions of Section 1027 of the Probate Code of the State of California, of the residue of the Estate of Gertrude Szekely, also known as Gertrude Christ, Deceased, and any and all rights to file with said Treasurer, demand and enforce the aforesaid claim,

is property within the United States owned or controlled by, payable or deliverable to, held on behalf of or on account of, or owing to, or which is evidence of ownership or control by, the aforesaid

national of a designated enemy country (Germany),

and it is hereby determined:

3. That to the extent that the person named in subparagraph 1 hereof is not within a designated enemy country, the national interest of the United States requires that such person be treated as a national of a designated enemy country (Germany)

All determinations and all action required by law, including appropriate consultation and certification, having been made and taken, and, it being deemed necessary in the national interest,

There is hereby vested in the Attorney General of the United States the property described above, to be held, used, administered, liquidated, sold or otherwise dealt with in the interest of and for the benefit of the United States.

The terms "national" and "designated enemy country" as used herein shall have the meanings prescribed in section 10 of Executive Order 9193, as amended.

Executed at Washington, D. C., on January 26, 1949.

For the Attorney General.

[SEAL] DAVID L. BAZELON,
Assistant Attorney General,
Director, Office of Alien Property.

[F. R. Doc. 49-922; Filed, Feb. 7, 1949;
8:55 a. m.]

[Vesting Order 12733]

KATHARINA FREY

In re: Bank account owned by Katharina Frey. F-28-9758-C-1.

Under the authority of the Trading With the Enemy Act, as amended, Executive Order 9193, as amended, and Executive Order 9788, and pursuant to law, after investigation, it is hereby found:

1. That Katharina Frey, whose last known address is 16 St. Johannesstrasse, Sprendlingen (Rheinland) Germany, is a resident of Germany and a national of a designated enemy country (Germany),

2. That the property described as follows: That certain debt or other obligation of Nippert & Nippert, 2116 Union Central Building, Cincinnati, Ohio, representing funds on deposit in a savings account at Atlas National Bank, Cincinnati, Ohio, account number 30762 entitled Katharina Frey, a national of Germany, by Nippert & Nippert, attorneys in fact, and any and all rights to demand, enforce and collect the same, subject however, to any and all lawful claims of said Nippert & Nippert for legal services, is property within the United States owned or controlled by, payable or deliverable to, held on behalf of or on account of, or owing to, or which is evidence of ownership or control by, Katharina Frey, the aforesaid national of a designated enemy country (Germany),

and it is hereby determined:

3. That to the extent that the person named in subparagraph 1 hereof is not within a designated enemy country, the national interest of the United States requires that such person be treated as a

national of a designated enemy country (Germany)

All determinations and all action required by law, including appropriate consultation and certification, having been made and taken, and, it being deemed necessary in the national interest,

There is hereby vested in the Attorney General of the United States the property described above to be held, used, administered, liquidated, sold or otherwise dealt with in the interest of and for the benefit of the United States.

The terms "national" and "designated enemy country" as used herein shall have the meanings prescribed in section 10 of Executive Order 9193, as amended.

Executed at Washington, D. C., on January 26, 1949.

For the Attorney General,

[SEAL] DAVID L. BAZELON,
Assistant Attorney General,
Director, Office of Alien Property.

[F. R. Doc. 49-923; Filed, Feb. 7, 1949;
8:55 a. m.]

[Vesting Order 12734]

MASATA FUJITA

In re: Debt owing to Masata Fujita. F-39-5138-C-1.

Under the authority of the Trading With the Enemy Act, as amended, Executive Order 9193, as amended, and Executive Order 9788, and pursuant to law, after investigation, it is hereby found:

1. That Masata Fujita, whose last known address is Japan, is a resident of Japan and a national of a designated enemy country (Japan),

2. That the property described as follows: That certain debt or other obligation owing to Masata Fujita, by Taijyu Kato, whose mailing address is P. O. Box 87, Warm Springs, California, in the amount of \$150.00, as of April 27, 1948, together with any and all accruals thereto, and any and all rights to demand, enforce and collect the same,

is property within the United States owned or controlled by, payable or deliverable to, held on behalf of, or on account of, or owing to, or which is evidence of ownership or control by, the aforesaid national of a designated enemy country (Japan),

and it is hereby determined:

3. That to the extent that the person named in subparagraph 1 hereof is not within a designated enemy country, the national interest of the United States requires that such person be treated as a national of a designated enemy country (Japan)

All determinations and all action required by law, including appropriate consultation and certification, having been made and taken, and, it being deemed necessary in the national interest,

There is hereby vested in the Attorney General of the United States the property described above, to be held, used, administered, liquidated, sold or otherwise dealt with in the interest of and for the benefit of the United States.

The terms "national" and "designated enemy country" as used herein shall have the meanings prescribed in section 10 of Executive Order 9193, as amended.

Executed at Washington, D. C., on January 26, 1949.

For the Attorney General.

[SEAL] DAVID L. BAZELON,
Assistant Attorney General,
Director Office of Alien Property.

[F. R. Doc. 49-924; Filed, Feb. 7, 1949;
8:56 a. m.]

[Return Order 240]

ANGELO DI PAOLO

Having considered the claim set forth below and having issued a determination allowing the claim, which is incorporated by reference herein and filed herewith,

It is ordered, That the claimed property, described below and in the determination, be returned, subject to any increase or decrease resulting from the administration thereof prior to return, and after adequate provision for taxes and conservatory expenses:

Claimant and Claim No., Notice of Intention To Return Published, Property

Angelo Di Paolo, a/k/a Angelo De Paolo, Teramo, Italy, Claim No. 5900; November 20, 1948 (13 F. R. 6876); \$3,062.95 in the Treasury of the United States. General Trust Mortgage Fund Participation Certificate No. 614 issued by West Branch Bank and Trust Company, Williamsport, Pennsylvania, Successor Trustee to Lycoming Trust Company, Williamsport, Pennsylvania, presently in custody of the Depository Section, Operations Branch, Office of Alien Property, Washington, D. C.

Appropriate documents and papers effectuating this order will issue.

Executed at Washington, D. C., on February 1, 1949.

For the Attorney General.

[SEAL] DAVID L. BAZELON,
Assistant Attorney General,
Director Office of Alien Property.

[F. R. Doc. 49-930; Filed, Feb. 7, 1949;
8:57 a. m.]

[Return Order 254]

EILER DE MOLTKE HUITFELDT

Having considered the claims set forth below and having issued a determination allowing the claims, which are incorporated by reference herein and filed herewith,

It is ordered, That the claimed property, described below and in the determination, be returned, subject to any increase or decrease resulting from the administration thereof prior to return, and after adequate provision for taxes and conservatory expenses:

Claimant and Claim No., Notice of Intention To Return Published, Property

Eiler Moltke Huitfeldt, a/k/a Eller de Moltke Huitfeldt, Copenhagen, Denmark, Claims Nos. 26241 and 31818; December 22,

1948 (13 F. R. 8236); \$192.45 in the Treasury of the United States. All right, title, interest and claim of any kind or character whatsoever of Eller Moltke Huitfeldt in and to the trust estate created by Decree of the Circuit Court of Baltimore City, Maryland, dated July 21, 1928, in proceedings entitled "Robert W. Williams, et al., vs. Jerome N. C. Bonaparte, et al." All right, title, interest and claim of any kind or character whatsoever of Eller Moltke Huitfeldt in and to the trust estate created by Decree of the Circuit Court No. 2 of Baltimore City, Maryland, in proceedings entitled "Ellen C. Bonaparte vs. Louise Eugenie Moltke Huitfeldt, et al." All right, title, interest and claim of any kind or character whatsoever of Eller Moltke Huitfeldt in and to the trusts created under the Last Will and Testament and Codicil thereto of Jerome Napoleon Bonaparte, deceased, in the process of administration by National Savings and Trust Company and Jerome Napoleon Charles Bonaparte, Substituted Trustees under appointment of the District Court of the United States for the District of Columbia in proceedings entitled "Jerome Napoleon Charles Bonaparte, et al. vs. Webster Appleton Edgar, et al, Equity No. 30,976."

Appropriate documents and papers effectuating this order will issue.

Executed at Washington, D. C., on February 1, 1949.

For the Attorney General.

[SEAL] DAVID L. BAZELON,
Assistant Attorney General,
Director, Office of Alien Property.

[F. R. Doc. 49-931; Filed, Feb. 7, 1949;
8:57 a. m.]

[Return Order 255]

BRUNO LUNEL

Having considered the claim set forth below and having issued a determination allowing the claim, which is incorporated by reference herein and filed herewith,

It is ordered, That the claimed property, described below and in the determination, be returned, subject to any increase or decrease resulting from the administration thereof prior to return, and after adequate provision for taxes and conservatory expenses:

Claimant and Claim No., Notice of Intention To Return Published, Property

Bruno Lunel, Florence, Italy, Claim No. 6175; December 10, 1948 (13 F. R. 7678); \$6,000.00 in the Treasury of the United States.

Appropriate documents and papers effectuating this order will issue.

Executed at Washington, D. C., on February 1, 1949.

For the Attorney General.

[SEAL] DAVID L. BAZELON,
Assistant Attorney General,
Director, Office of Alien Property.

[F. R. Doc. 49-932; Filed, Feb. 7, 1949;
8:57 a. m.]

GIUSEPPE BASTIANELLI

NOTICE OF INTENTION TO RETURN VESTED PROPERTY

Pursuant to section 32 (f) of the Trading With the Enemy Act, as amended,

notice is hereby given of intention to return, on or after 30 days from the date of the publication hereof, the following property, subject to any increase or decrease resulting from the administration thereof prior to return, and after adequate provision for taxes and conservatory expenses:

Claimant, Claim No., Property and Location

Giuseppe Bastianelli, Rome, Italy, 36823, \$51,953.92 in the Treasury of the United States. All right, title, interest and claim of any kind or character whatsoever of Giuseppe Bastianelli in and to the trust created under Paragraph Third of the Last Will and Testament of Marion Rawle Bastianelli, deceased.

Executed at Washington, D. C., on February 1, 1949.

For the Attorney General.

[SEAL] DAVID L. BAZELON,
Assistant Attorney General,
Director Office of Alien Property.

[F. R. Doc. 49-933; Filed, Feb. 7, 1949;
8:57 a. m.]

NICOLA DE PIETRO ET AL.

NOTICE OF INTENTION TO RETURN VESTED PROPERTY

Pursuant to section 32 (f) of the Trading With the Enemy Act, as amended, notice is hereby given of intention to return, on or after 30 days from the date of the publication hereof, the following property, subject to any increase or decrease resulting from the administration thereof prior to return, and after adequate provision for taxes and conservatory expenses:

Claimant, Claim No., Property and Location

Nicola de Pietro, Florence, Italy, 6975, \$2,741.69 in the Treasury of the United States. Giuseppe de Pietro, Florence, Italy, \$2,863.45 in the Treasury of the United States. Maria Giulia de Pietro, Florence, Italy, \$2,863.45 in the Treasury of the United States.

Executed at Washington, D. C., on February 2, 1949.

For the Attorney General.

[SEAL] DAVID L. BAZELON,
Assistant Attorney General,
Director, Office of Alien Property.

[F. R. Doc. 49-934; Filed, Feb. 7, 1949;
8:53 a. m.]

FRIEDRICH OTTENSTEIN

NOTICE OF INTENTION TO RETURN VESTED PROPERTY

Pursuant to section 32 (f) of the Trading With the Enemy Act, as amended, notice is hereby given of intention to return, on or after 30 days from the date of publication hereof, the following property located in Washington, D. C., including all royalties accrued thereunder and all damages and profits recoverable for past infringement thereof, after adequate provision for taxes and conservatory expenses:

Claimant, Claim No., and Property

Friedrich Ottenstein, Stockholm, Sweden; 6715; Property described in Vesting Order No.

NOTICES

205 (7 F. R. 8669, October 27, 1942) relating to United States Patent Application Serial No. 436,532 (now United States Letters Patent No. 2,404,741).

Executed at Washington, D. C., on February 1, 1949.

For the Attorney General.

[SEAL] DAVID L. BAZELON,
Assistant Attorney General,
Director, Office of Alien Property.

[F. R. Doc. 49-935; Filed, Feb. 7, 1949;
8:58 a. m.]

FRITZ ROTTER

NOTICE OF INTENTION TO RETURN VESTED PROPERTY

Pursuant to section 32 (f) of the Trading With the Enemy Act, as amended, notice is hereby given of intention to return, on or after 30 days from the date of publication hereof, the following property located in Washington, D. C., including all royalties accrued thereunder and all damages and profits recoverable for past infringement thereof, after adequate provision for taxes and conservatory expenses:

Claimant, Claim No., and Property

Fritz Rotter, 111 South Flores, Los Angeles 36, California, 6154; \$1888.44 in the Treasury of the United States. 25% of all future royalties accruing to Editions Charles Brull by virtue of a contract dated January 28, 1937 between the said Editions Charles Brull and Harms, Inc., and 25% of all other future royalties accruing from the exploitation of the composition "I Kiss Your Hand Madame" in the United States.

Executed at Washington, D. C., on February 1, 1949.

For the Attorney General.

[SEAL] DAVID L. BAZELON,
Assistant Attorney General,
Director, Office of Alien Property.

[F. R. Doc. 49-937; Filed, Feb. 7, 1949;
8:58 a. m.]

MRS. EMILIE VOGL

NOTICE OF INTENTION TO RETURN VESTED PROPERTY

Pursuant to section 32 (f) of the Trading With the Enemy Act, as amended, notice is hereby given of intention to return, on or after 30 days from the date of publication hereof, the following property located in Washington, D. C., including all royalties accrued thereunder and all damages and profits recoverable for past infringement thereof, after adequate provision for taxes and conservatory expenses:

Claimant, Claim No., and Property

Mrs. Emilie Vogl, 12 Square Gabriel Faure, Paris 17e, France, 6128, \$1888.44 in the Treasury of the United States. 25% of all future royalties accruing to Editions Charles Brull by virtue of a contract dated January 28, 1937 between the said Editions Charles Brull and Harms, Inc., and 25% of all other future royalties accruing from the exploitation of

the composition "I Kiss Your Hand Madame" in the United States.

Executed at Washington, D. C., on February 1, 1949.

For the Attorney General.

[SEAL] DAVID L. BAZELON,
Assistant Attorney General,
Director, Office of Alien Property.

[F. R. Doc. 49-938; Filed, Feb. 7, 1949;
8:58 a. m.]

G. RICORDI AND Co.

NOTICE OF INTENTION TO RETURN VESTED PROPERTY

Pursuant to section 32 (f) of the Trading With the Enemy Act, as amended, notice is hereby given of intention to return, on or after 30 days from the date of publication hereof, the following property located in Washington, D. C., including all royalties accrued thereunder and all damages and profits recoverable for past infringement thereof, after adequate provision for taxes and conservatory expenses:

Claimant, Claim No., Property

G. Ricordi and Company, Milan, Italy, 28214, \$313,339.57 in the Treasury of the United States. All of the capital stock of G. Ricordi and Company, Inc., a New York corporation, consisting of 300 shares of \$100 par value common capital stock presently registered in the name of the Attorney General of the United States. All right, title and interest of the claimant in and to a certain contract by and between Dr. Renato Tasselli, acting as attorney-in-fact for the claimant, and Broadcast Music, Inc. of New York City, executed under the date of October 7, 1940, and all income, profits, royalties and other property heretofore accrued or which may hereinafter accrue to or in favor of said claimant by virtue of the aforesaid contract. Property to the extent owned by claimant immediately prior to the vesting thereof, described in Vesting Order Nos. 730 and 1174 (8 F. R. 15917, November 24, 1943), relating to compositions listed in the Ricordi catalogues "Catalogue of Piano Music, Classic and Modern" "Vocal Catalogue" "Catalogue of Music for String Instruments" "Catalogue of Orchestra Music" "Catalogue of Music for Harp, Guitar, Banjo, Cetra and Mandolin" "Catalogue of Music for Woodwind, Reed, Brass and Percussion Instruments" "Vocal Scores and Vocal Excerpts from Operas" "Orchestra" "Cori" "Banda e Fanfara" "Supplement to General Catalogue, September 30, 1940" "Rental Library of G. Ricordi and Co., Milan, Italy" and "Novelties—April 9, 1941" (attached as exhibits to said vesting orders). This return is subject to the limitations contained in the Memorandum of Understanding between the Government of the United States of America and the Government of Italy, dated August 14, 1947, relating to literary, artistic or industrial property to be returned.

Executed at Washington, D. C., on February 1, 1949.

For the Attorney General.

[SEAL] DAVID L. BAZELON,
Assistant Attorney General,
Director, Office of Alien Property.

[F. R. Doc. 49-936; Filed, Feb. 7, 1949;
8:58 a. m.]

[Vesting Order 12735]

M. FURUYA Co., Ltd.

In re: Debt owing to M. Furuya Company, Ltd., also known as The Furuya Co., Ltd. D-39-1112-C-1.

Under the authority of the Trading With the Enemy Act, as amended, Executive Order 9193, as amended, and Executive Order 9788, and pursuant to law, after investigation, it is hereby found:

1. That M. Furuya Company, Ltd., also known as The Furuya Co., Ltd., the last known address of which is Yokohama, Japan, is a corporation, partnership, association or other business organization, organized under the laws of Japan, and which has or, since the effective date of Executive Order 8389, as amended, has had its principal place of business in Yokohama, Japan and is a national of a designated enemy country (Japan)

2. That the property described as follows: That certain debt or other obligation owing to M. Furuya Company, Ltd., also known as The Furuya Co., Ltd., by M. Furuya Co., c/o W. M. Williams, 1377 Dexter Horton Bldg., Seattle 4, Washington, in the amount of \$338.20, as of December 31, 1945, together with any and all accruals thereto, and any and all rights to demand, enforce and collect the same,

is property within the United States owned or controlled by, payable or deliverable to, held on behalf of, or on account of, or owing to, or which is evidence of ownership or control by, the aforesaid national of a designated enemy country (Japan),

and it is hereby determined:

3. That to the extent that the person named in subparagraph 1 hereof is not within a designated enemy country, the national interest of the United States requires that such person be treated as a national of a designated enemy country (Japan)

All determinations and all action required by law, including appropriate consultation and certification, having been made and taken, and, it being deemed necessary in the national interest,

There is hereby vested in the Attorney General of the United States the property described above, to be held, used, administered, liquidated, sold or otherwise dealt with in the interest of and for the benefit of the United States.

The terms "national" and "designated enemy country" as used herein shall have the meanings prescribed in section 10 of Executive Order 9193, as amended.

Executed at Washington, D. C., on January 26, 1949.

For the Attorney General.

[SEAL] DAVID L. BAZELON,
Assistant Attorney General,
Director, Office of Alien Property.

[F. R. Doc. 49-925; Filed, Feb. 7, 1949;
8:56 a. m.]